In the Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 55.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,

Plaintiff in Error,

Vs.

THE KANSAS PACIFIC RAILWAY COMPANY,

Defendant in Error.

In error to the Supreme Court of the State of Kansas.

BRIEF OF HENRY BEARD,

Of Counsel for Defendant in Error.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 65.

THE MISSOURI, KANSAS, AND TEXAS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE KANSAS PACIFIC RAILWAY COMPANY, DEFENDANT IN ERROR.

In error to the Supreme Court of the State of Kansas.

BRIEF OF HENRY BEARD,
Of Counsel for Defendant in Error.

STATEMENT OF THE CASE.

The object of this writ of error is to review and reverse the judgment of the supreme court of the State of Kansas, entered August 24, 1875, directing the district court of Davis county, Kansas, to enter judgment for the plaintiff below, the Kansas Pacific Railway Company, as to all the lands in controversy in the cause, as prayed for in its petition. (Printed Record, p. 65.)

The description of the lands is found in a conveyance, January 15, 1872, by the Governor of Kansas, to the defendant below, (the Missouri, Kansas, and Texas Railway Com-

pany.) (Printed Record, pp. 11 to 21, inclusive,) Total, $92{,}019\frac{42}{100}$ acres.

These lands had been embraced in two lists, certified to the State of Kansas, by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior:

List No. 1: "ten miles limits" ..... $52{,}390\frac{21}{100}$
List No. 2: "twenty miles limits" ..... $39{,}629\frac{21}{100}$
(Commissioner's letter, 12th January, 1872, Record, p. 7.)

The list of lands within ten miles was made as of lands "granted to the State of Kansas, by the act of Congress approved July 1, 1864," and issued upon a map certified by the Governor of Kansas, sent July 25, 1870, by the Secretary of the Interior, to the commissioner, showing the completion of the Missouri, Kansas, and Texas railroad, "from Junction city to the southern boundary of the State of Kansas," and it was approved by the Secretary of the Interior, December 23, 1871, subject to all the conditions of said act of Congress, "and to any valid interfering rights which may exist, to any of the lands embraced in the foregoing list." (Record, p. 9.)

The list of lands "between the ten and twenty miles limits" was certified to the State at the same time and in similar form as indemnity lands, and likewise subject to valid interfering rights. (Pp. 10 and 11.)

[Indemnity lands are authorized by section 1, act of 3d March, 1863. (12 Stats., 772.) There may be some distinctions between the two classes of lands—granted tracts, and indemnity selections—therefore the fact is noted that the subject matter of the original suit embraced lands in the two several approved lists, though in the same patent from the State to the plaintiff in error.]

It may be here noted that judgment having been given

for the Kansas Pacific Company *in the court of original jurisdiction* for lands amounting to 28,704.41 acres, as included within a withdrawal of lands made July 31, 1862, under the grant of July 1, 1862 (Record, pp. 61 to 64), the plaintiff in error in the United States Supreme Court does not appear to have excepted thereto in the courts of the State; and it is conceded by its attorney (Brief of Mr. Sears, p. 3,) that these lands are not in controversy now. In any event the judgment below must be affirmed as to these lands.

The supreme court of Kansas held that the grant of land made to the State by the act of July 1, 1864, never attached to any of the lands in controvery—but the same have been granted by Congress to the defendant in error. The unanimous opinion by Brewer, judge, is found on pp. 66 to 73, inclusive, of the printed record.

STATEMENT OF FACTS FOR THE DEFENDANT IN ERROR.

The acts of Congress upon which the title of the Kansas Pacific Company rests are:

Act of July 1, 1862, 12 Stat., 489.
Act of July 2, 1864, 13 Stat., 356.
Joint resolution of May 7, 1866, 14 Stat., 355.
Act of July 3, 1866, 14 Stat., 79.

The joint resolution of May 7, 1866, extended the time allowed by the previous acts for completing the first one hundred miles of the road and telegraph. With the other acts this court is already familiar, and it is not deemed neccssary to quote them at length. (Pamphlet copies of said acts will be filed with this brief for the convenience of the court.)

A joint resolution of March 3, 1869, (15 Stat., 348,) authorized the defendant in error to change its name to the Kansas Pacific Railway Company. The original name was "The Leavenworth, Pawnee and Western Railroad Com-

this act to construct its road and telegraph line from the Missouri river to the initial point aforesaid, may construct its road and telegraph line so as to connect with the Union Pacific Railroad at any point westwardly of such initial point, in case such company shall deem such westward construction more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road, such company shall be entitled to all the benefits, and be subject to all the conditions and restrictions of this act: *Provided further, however*, That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided, if the same had united with the Union Pacific Railroad on the one hundredth degree of longitude; nor shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided."

The act of July 2, 1864, was amended by an act approved July 3, 1866, (14 Stat., 79,) the first section of which is as follows:

SECTION 1. "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Union Pacific Railway Company, Eastern Division, is hereby authorized to designate the general route of their said road, and to file a map thereof, as now required by law, at any time before the first day of December, eighteen hundred and sixty-six; and upon the filing of said map, showing the general route of said road, the lands along the entire line thereof, so far as the same may be designated, shall be reserved from sale by order of the Secretary of the Interior: *Provided*, That said company shall be entitled to only the same amount of the bonds of the United States to aid in the construction of their line of railroad and telegraph as they would have been entitled to if they had connected their said line with the Union Pacific Railroad on the one hundredth degree of longitude as now required by law: *And provided, further*, That said company shall connect their line of railroad and telegraph with the Union Pacific Railroad, but not at a point more than fifty

miles westwardly from the meridian of Denver, in Colorado."

The second section of this act authorized the Union Pacific Company to construct its road without reference to any initial point on the 100th meridian.

Section 17 of the act of 1862, required the system of roads to be completed by July 1st, 1876, under penalty of forfeitures; the consummation of the system on that day apparently being designed as a grand centennial event in the public history of the country, crowning appropriately its unparalleled progress, enterprise and prosperity, during one hundred years of republican freedom.

Soon after the passage of the act of July 3d, 1866, the Kansas Pacific Company, the plaintiff below—

"Then known by the name of the Union Pacific Railway Company, Eastern Division, did, in pursuance of said act, designate the general route of the said railroad, and did file a map thereof, in the Department of the Interior, which map designated the line of route of plaintiff's road from Fort Riley, which is situate on the left bank of the Republican and Kansas rivers, at the confluence of said streams, and to which point plaintiff had then constructed its road, to the western boundary of the State of Kansas, by the way of the Smoky Hill river. That upon the filing of said map, and on the 11th day of July, 1866, the Secretary of the Interior, in compliance with said act of Congress of July 3, 1866, and the request of the plaintiff, directed the Commissioner of the General Land Office to cause the public lands to be withdrawn along the line indicated by said map. And the said Commissioner of the General Land Office, on the 14th day of July, 1866, by his communication of that date, to the Register and Receiver of the Land Office at Junction City, pursuant to the instructions from the Secretary of the Interior, directed the said Register and Receiver to withhold from sale or location, pre-emption and homestead, all the odd sections within the twenty and twenty-five miles limit, as delineated on the diagram accompanying his instructions. The designated line of railroad as shown upon the map filed by the plain-

tiff, as aforesaid, and on the diagram transmitted to the Register and Receiver, is across the Republican river, and along the Smoky Hill river, on the north side thereof, running south of and passing near Junction City; which place is distant three miles from the left bank of the Republican, where this last named route commenced, and which point of commencement was only a few rods from the mouth of the Republican river. That the instructions of the Commissioner of the General Land Office aforesaid were received by the Register and Receiver at Junction City, on the 26th day of July, 1866, which officers, pursuant to said instructions, then proceeded to mark and did mark their official plats to correspond with the diagrams sent them by said Commissioner; said local officers did, in all things comply with the order of said Commissioner of the General Land Office, which withdrawal from (sale,) location, pre-emption and homestead, embraced all the lands in controversy in this cause, all being within twenty miles of the line of plaintiff's road, as subsequently constructed.

"That in the autumn of 1865, the plaintiff had made a preliminary survey of the route of its road upon the Smoky Hill route, and after the filing of the map and withdrawal of the lands as aforesaid, and sometime in the month of August, 1866, commenced the permanent location of its road along its last mentioned route, and soon thereafter commenced the construction of the same.

"On the 14th of December, 1866, the president of plaintiff made his affidavit of the completion of twenty (20) additional miles of the railroad of the plaintiff.

"That said twenty miles began at a point on the line of said road one hundred and thirty (130) miles westwardly from the east line of the State of Kansas, and terminated at a point one hundred and fifty (150) miles west of said State line, the same being the sixth (6) section of the road, commencing five (5) miles east of Fort Riley.

"That on the 20th of December, 1866, the Secretary of the Interior instructed the commissioners who had been appointed by the President pursuant to the act of Congress aforesaid to examine and report on the said sixth (6) section in accordance with the acts of Congress approved July 1, 1862, and July 2, 1864, and the instructions of the Department of the Interior before given to said commissioners which should govern them in their examination, but before

said commissioners had proceeded to make said examination the plaintiff had constructed five (5) additional miles of its road and the said commissioners were on the 10th of January, 1867, duly directed to examine and report upon the twenty-five (25) miles of completed road.

"That said commissioners did inspect and examine said sixth (6) section of plaintiff's road, and did make their report thereon to the Secretary of the Interior, and did report that they had examined twenty-five (25) miles of the plaintiff's road, commencing at the one hundred and thirtieth (130) and terminating at the one hundred and fifty-fifth (155) mile station west from the initial point on the State line dividing the States of Missouri and Kansas, and the said commissioners did report the said sixth section of twenty-five (25) miles ready for present service and completed and equipped as a first-class railroad, which report was made on the 17th day of January, 1867, and was filed in the Department of the Interior with the Secretary thereof, who on the 22d day of January, 1867, reported the same to the President of the United States and recommended the acceptance of the said report and the issue of the bonds and patents for land due the company on account of said section agreeably to law, and the President of the United States did on the said 22d day of January, 1867, approve of the said recommendation of the Secretary of the Interior and directed the Secretary of the Treasury and the Secretary of the Interior to carry into effect the recommendations of the latter officer above mentioned, and set out the lands recommended by the Secretary to be so patented to the plaintiff, and covered by the executive order last aforesaid, among others embraced all the lands described in the petition of the plaintiff in this cause, afterwards certified to the State of Kansas."

See Record, pp. 45 to 47; *aliter* 114 to 120, inclusive.

It is shown by the findings (Record, pp. 47, 48, and 49,) that the railroad of the Kansas Pacific Company, "was "constructed to Denver, and opened to the public and the "Government for use, on the 1st September, 1870; but that "part of the line from about the 394th mile post to "Denver—638 miles from the initial point—was not ac-

"cepted by the President, until the 19th October, 1872. "The line from Denver to Cheyenne was completed in the "summer of 1870, by the Denver Pacific Railway Com- "pany, and accepted by the President on the 2d May, "1872," (Record, p. 47,) thus completing the entire line of railroad as originally provided to a connection with the Union Pacific Railroad, and making "a continuous line of "railroad and telegraph from Kansas City, by way of Den- "ver to Cheyenne," as provided in section 2d of the act of Congress of March, 1869.

The Court below, found also, (pp. 48, 49, of Record,) that—

"The lands in controversy, for which this action is brought and described in the petition, are all adjacent to the sixth section of the line of the plaintiff's railroad and within twenty (20) miles of said completed section, and are embraced within the order of the President accepting said sixth section, as hereinbefore stated, and ought by said executive order to have been patented to plaintiff, if, by the several acts of Congress affecting the plaintiff and the defendant, the President had lawful authority to make such order.

"That the plaintiff before the bringing of this suit paid the cost of the surveys of said lands pursuant to the direction of the Commissioner of the General Land Office, and tendered and offered in payment the fees of the local land officers required by law to be paid for selecting and certifying said lands, and tendered to the Commissioner of the General Land Office the expense and cost of making the patents for the lands ordered to be patented by the President as aforesaid, but these officers holding under the instructions of the then Secretary of the Interior, and not being the same officers who had recommended the issuing of the patents, that the lands were not granted to the plaintiff, would not receive from the plaintiff their fees for selecting and certifying said lands and the cost for executing patents for the same, and refused to select and certify said lands to the plaintiff and patent the same to the plaintiff."

The amended plea of the defendant below admitted substantially the facts last recited. (Record, p. 40.)

The sixth section of the Kansas Pacific Railroad, accepted by the President of the United States, as stated above, lies opposite to the lands in controversy, and the preliminary survey of that portion was made in the autumn of 1865, (Record, pp. 46–116,) and was designated by the map filed in the Interior Department, July 11, 1866. (Record, pp. 45–114.)

The lands in controversy, (beyond the $28{,}704\frac{41}{100}$ acres, embraced in the withdrawal of 1862,) were all embraced within the withdrawal for twenty-five miles in width, ordered July 14, 1866. (Record, pp. 46–116.)

The said sixth section was accepted by the President of the United States, on the 22d January, 1867, and the issuing of patents for the granted lands was then ordered. (Record, pp. 47–119.)

The map in the record shows the limits of the withdrawals in 1862 and 1866—also the twenty-mile limits of the grant to the defendant in error, and that the lands in controversy are within said limits. This map does not show the 25 miles limits of the withdrawal July, 1866, on the same line of road.

FACTS IN THE CASE FOR PLAINTIFF IN ERROR.

The claim of the plaintiff in error is based upon a conveyance by the Governor of Kansas, and on two certificates of the Department of the Interior, signed by the Commissioner of the General Land Office, Dec. 18, 1871, and approved by the Secretary of the Interior, Dec. 23, 1871, certifying the lands in controversy to the State of Kansas, as granted to said State by the act of Congress approved July 1, 1864, entitled "An act making an additional grant of lands to the State of Kansas," &c.

Said certificates recite that said lands were "vacant and

unappropriated," and that the plaintiff in error had fully completed a railroad "from Junction City to the southern boundary of the State of Kansas"—the certification being subject to all the conditions of the said act of July 1, 1864, and "to any valid interfering rights which may exist to any of the tracts named in the foregoing list." (Record, pp. 8, 9, 10, 11, *et seq.*)

The validity of these certificates is attempted to be sustained by a long array of facts and documents, from February 11, 1859, the date of the charter of the Atchison and Topeka Railroad Company, to January 1, 1873, that of a certificate of the Governor of Kansas, made nearly one year after he had conveyed the lands to the plaintiff in error. Record, pp. 50 (127) to 60 (155) inclusive.

Prominent among these we note, consecutively:

The charter of the plaintiff in error, under the laws of Kansas, 20th September, 1865, with the name of "Union Pacific Railway, Southern Branch"—being the same company named in the act of Congress of July 26, 1866, and for whose benefit a grant of lands was thereby made, and the same that made a contract, March 19, 1866, with the Atchison, Topeka and Santa Fé Railroad Company. Record, pp. 50 (127), and 52, (134.)

On the 8th of August, 1866, the plaintiff in error accepted the terms of the act of Congress of 26th July, 1866, and the acceptance was filed in the office of the Secretary of the Interior, December 26, 1866. (Record, pp. 53, 135.)

Between the 5th and 21st days of September, 1866, the plaintiff in error caused the line of its route to be surveyed and made upon the ground "from Junction City, a point near the Fort Riley reservation," to Council Grove, a distance of thirty-six miles. The map of this location was filed in the office of the Secretary of State of Kansas, No-

vember 14, 1866, and in the office of the Secretary of the Interior, 26th of December, 1866. (Record, pp. 53, 137.)

January 4th, 1867, the receipt of the resolution of acceptance was acknowledged by the Secretary of the Interior, (Record, pp. 53, 136), and on the 26th of March, 1867, a withdrawal of lands was ordered, under section 4 of said act of Congress, of all the odd-numbered sections and parts of sections, "to the extent of five alternate sections per mile on each side of said road, and not exceeding in all ten sections per mile," and of "all the vacant lands between the ten and twenty-mile limits"—that is, of the even as well as the odd numbered tracts between the ten and twenty miles; there being no alternates here, no sections retained to the United States; this withdrawal and its grant being in this respect peculiar and exceptional—that indemnity is allowed in both odd and even numbered sections.

The plaintiff in error commenced its road at Junction City, March 1, 1869, and on the 30th of September, 1869, the Governor of Kansas accepted, and certified to the Secretary of the Interior, as duly completed, *ten miles* of the railroad, and on the 1st of November, 1869, *ten additional consecutive miles*, and so on for each consecutive *ten miles*, until June, 1870, when, on 9th of June, 1870, the Governor certified to the completion of the entire road from Junction City to the southern boundary of Kansas. (Record, pp. 53, 137, and 54, 138.)

[The citations of the statutes of the United States on which the claim of the plaintiff in error rests, being imperfect both in the record and in the statement of plaintiff's counsel, because of omissions, I respectfully annex to this brief full copies of the acts of Congress of March 3, 1863, July 1, 1864, and July 26, 1866, making grants of land to Kansas.]

The supreme court of Kansas unanimously held that the effect of the act of Congress of July 1, 1864, construed with section 1, of the act of March 3d, 1863, is to exclude from the grant thereby made to the State of Kansas, "any "lands which, at the time the line of road is definitely fixed, "have been reserved to the United States, for any purpose "whatever. It leaves the specific sections undetermined until "the definite location of the road, and then excludes from "the grant any lands to which adverse rights have at-"tached." (Record, 73, 189.)

This decision is alleged to be erroneous, because it holds that the grants to the State "never attached to the lands "described in the petition of the plaintiff below," and to this alleged error the argument of the plaintiff in error is addressed.

I.

The act of March 3d, 1863, contains two distinct clauses of limitation in section 1—"a" and "b"—cited imperfectly on p. 19 of plaintiff's brief—in full, as follows:

("a.") "But in case it shall appear that the United States have, when the lines or routes of said road and branches are definitely fixed, sold any section or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the purposes aforesaid, from the public lands of the United States nearest to tiers of sections above specified, so much land, in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the rights of pre-emption or homestead settlements have attached as aforesaid; which lands, thus indicated by odd numbers, and selected by direction of the Secretary of the

Interior as aforesaid, shall be held by the State of Kansas for the use and purpose aforesaid," &c.

("b.") "*And provided, further*, That any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operations of this act, except so far as it may be found necessary to locate the routes of said road and branches through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the President of the United States."

It is argued that the limitation "a" has been misconstrued, and that with the construction thereof adopted by the supreme court of Kansas, the limitation "b" would be useless and inoperative, and its insertion in the act of Congress would be "a work of supererogation."

It must be noticed that the grant of July 26, 1866, contains likewise these two clauses, similar in words and purport; so do nearly all the grants to States for railroads, made by Congress, from 1856 to 1866. Congress has intended something different or additional by the second of the two clauses, and we need not reflect long to discern the clear and proper province and effect of each. In this case, note that the grant is of *sections of odd numbers, for ten sections in width on each side of said roads.*

The lands designated by limitation "b" are excluded "from the *operations of this act*, except so far as it may be "found necessary to locate the routes of said roads;" that is, the act has no effect upon them, any more than if they were under the waters of a navigable lake or stream.

Such lands being excluded from the "operation" of the act, we come to the limitation (a) in the grant of alternate odd-numbered sections of public lands, found along the line of road where located.

For all the lands described in this limitation "a," the State is allowed to take other lands of the United States, in alternate odd-numbered sections, from the tiers of sections adjunct to the granted ones, but not to be more than twenty miles from the road; and it is declared that the State of Kansas shall hold the selected lands. For lands in limitation "b," there is no indemnity—no other lands can be selected—the grant does not affect them in any way whatever. Both the limitations cling to the grant, wherever it may be located. Upon the lands of class "a" the grant might have effect, if it were not for the adverse claims initiated prior to the location of route, and the declaration that the State shall hold other lands in lieu of them; but on those of class "b," it can never have any effect whatever, as they are excluded *equo tempore* with the date of the grant. But those in class "a" are excepted *equo tempore* with the date of the location of the route of road.

It is conceded that when the plaintiff in error located its road, the lands in contest had been withdrawn by order of the Secretary of the Interior, for the benefit of the defendant in error, in accordance with the plain requirements of the statutes.) (Section 7, act July 1, 1862, and section 1, act of July 3d, 1866.) This compelled the State therefore to take indemnity, if she should locate the road so as to interfere, and debarred her from taking the lands that had so been withdrawn.

Sherman *vs.* Buick, 93d U. S., 209.

It is because the railroad grants are in terms of present and absolute donation, whilst at the same time they are not made certain until a location of the road, which may not take place for years afterward, that the United States retains in the granting acts, control over its domain, until a location of route is made; and makes large exceptions from the grant, of all lands which have been otherwise appropriated, where the appropriation is subsequent to the date of the

grant; and in lieu of such tracts, the State shall have other lands.

See R. R. Co. *vs.* Fremont Co., and—
R. R. Co. *vs.* Smith, 9th Wallace, 89 and 95.

"Whatever is included in the exception, is excluded from "the grant."

L. L. & G. R. R. Co. *vs.* The United States, 92 U. S., at pp. 740, 741.

That the lands withdrawn for the defendant in error, under the acts of 1862, 1864, and 1866, are intended to be excepted from the grant, to the State of Kansas, of 3d March, 1863, and July 1, 1864, for railroads located after such withdrawal, is about as clear as if the withdrawal existed prior to the grants to the State.

The act of July 1, 1864, did not authorize any withdrawal of lands, and none was ever made. This grant gave nothing to the grantee prior to a location of the road and telegraph.

The act of July 1, 1862, declared the power of the United States to alter, amend, or repeal the grant in the interest of securing a prompt construction of the Pacific Railroad and branches. The United States itself retained an interest in the use of such roads after construction, and held a statute lien on all the railroad property, to secure ultimate payment of loans of public credit; and the Kansas branch of the Union Pacific road is plainly referred to in the clause of section 1, act of March 3, 1863, providing, "That "no part of the land granted by this act shall be applied to "aid in the construction of any railroad, or part thereof, "for the construction of which *any previous grant of land or* "*bonds* may have been made by Congress." There was to be no consolidation of the two grants upon one line of road, and the grant to the defendant in error is alluded to as a previous grant. The act of July 2, 1864, is the enlarge-

ment of that of 1862, not by new words of additional grant, but by a change in the words of the act of July 1, 1862, thus carrying the grant with a full width of twenty miles, back to the date of July 1, 1862.

It seems to be conceded in the brief of counsel for the plaintiff in error that the meaning and intent of limitation "a" was to withhold from the effect of the grant "any of "the public lands that any contingency or policy of the United "States required that they should take for their own use." This view of the clause sustains the decision of the court below. The policy of the Government was to secure the prompt construction of the Pacific Railroad and branches, and in aid of that governmental object, express provisions of law required the Secretary of the Interior to withdraw lands. When such withdrawal was made it was done "by the United States," for acts of Congress required it, and the fact that it was done for aid to the Pacific Railroad, was as much a Government purpose and end, as if it had been done to accommodate the army or the Indians.

II.

It is claimed for the plaintiff in error that the act of July 1, 1864, *proprio vigore*, located the grant therein offered to the State of Kansas, because the road indicated was short, and the terminal points were designated. One reply to this is, that the road they have located and built, is not identified in the Record as having the principal terminal point named in the act of July 1, 1864. That act designates "a point near Fort Riley, on the branch Union Pacific Railroad." In the Record, p. 53, 10th and 11th findings, it appears, that the line was located and built "from Junction City, a point near the Fort Riley reservation"—language borrowed from the act of 1866, and not from that of 1864. But it does not appear that the initial point was on the Kansas Pacific Railroad or was near Fort Riley.

The initial point of this road is at Junction City, which is at least three miles west of Fort Riley (Record, pp. 45, 115)—not "near" the fort, because both the railroads are measured by *miles*—the sections to be completed are so measured—the lands granted laterally are limited by miles of distance; and in such a system no one point is near another that is over one mile distant. "Near" can have no other meaning, for if three miles is "near," why not four; and then if four is "near," why not five, and so on from the eastern boundary of Kansas to the western. If, therefore, the grant was definitely fixed in the law making it, *the road itself is not the one to aid in the construction of which the grant was made.* The diagram map shows the northern terminus of the Missouri, Kansas and Texas road at a considerable distance from Fort Riley. On July 1, 1864, the Branch Union Pacific road was on the left bank of the Republican river, and the reference in the act of July 1, 1864, for a terminus of the State road, is to some point at least three miles from its present point of beginning.

III.

The grant by act of July 1, 1864, *never took effect.*

We take the position boldly, that the land grant of the plaintiff in error rests wholly upon the act of Congress of July 26, 1866, and that under the act of July 1, 1864, it has received no grant whatever.

The record discloses the plain proposition that everything that was done by the plaintiff in error *was done under and subsequent to the act of July* 26, 1866.

The grant of July 26, 1866, required that the plaintiff in error should accept it, and the acceptance be filed in the Department of the Interior. The acceptance was made August 8, 1866, the survey of line begun September 5, and the acceptance and map of route filed in the Department of

the Interior 26th of December, 1866. Then there was a withdrawal March 26, 1867, (Record, p. 57), as authorized by the act of 1866, which was strictly based on that act.

The plaintiff in error began its road at Junction City, near the Fort Riley reservation (p. 53, Finding 11), which was agreeable to the act of 1866, but not in conformity to that of July 1, 1864, which called for a point on the branch of the Union Pacific road, near Fort Riley.

Then the road of the plaintiff in error was built, and certified by the Governor in *ten mile sections*, (Record 53, Finding 11,) a method conforming to the act of 1866, but not allowed by the acts of 1864 and 1863, which required twenty mile sections. Next, simultaneous certificates were issued by the General Land Office for both granted tracts and indemnity, (Record, pp. 7, 8, 9, 10 and 11,) and that without regard to the length of the road completed. The certificate of the Governor of Kansas, on which the lists were based, recited the completion of the railroad of the plaintiff in error "from Junction City to the southern boundary of the State of Kansas." (Record, pp. 9–26.) This the act of 26th July, 1866, allowed, but the act of March 3, 1863, (section 4,) does not authorize the certifying of any indemnity lands (between the ten and twenty miles limits) until the whole of said roads and branches "are completed."

The defect in the title of the plaintiff in error here displayed, was sought to be covered by a *post facto* certificate of Governor Harvey, January 1st, 1873, (Record, p. 59,) though the plaintiff in error had received its deed from the State, dated January 15, 1872, (Record, p. 21,) for all the lands in controversy.

On general principles of law we claim that as the act of 26th July, 1866, required the plaintiff in error to accept its provisions in writing, which was done, there is now no other contract between the United States and the plaintiff in error as to the same subject matter—the building of a rail-

road from "near the Fort Riley Military Reservation to Emporia," &c.; that all prior negotiations and equities are merged in that contract. It is the whole of what both parties have agreed on, and no more can be added to it by reference to the former grants of March 3d, 1863, and July 1st, 1864, which it is not shown that the plaintiff in error ever did accept or agree to, or that the United States ever offered to it for its acceptance.

IV.

The two grants to the State, of 1864 and 1866, cannot be administered along the same line of railroad because of their differing provisions:

1. The act of 1864 offered a grant subject to the disposal of the State Legislature. That of 1866 was not subject to such disposal.

2. The act of 1864 proffered a grant of odd sections, with indemnity selections in other odd sections; that of 1866 allowed selections of both odd and even numbered sections. The Secretary of the Interior could not follow both laws at the same time. If he selected even sections he would violate the act of 1864; if he refused to do it, he would not conform to the act of 1866.

3. The grant of 1864 is limited in quantity by the odd-numbered tracts actually found within ten miles, not wholly excepted from the operation of the act; that of 1866 is larger; it is of five odd sections in width on each side—equal to ten sections per mile.

4. The act of 1864 imposed restrictions upon the State in disposing of the granted lands, which are essentially different from those imposed upon the plaintiff in error by the act of 1866.

the Interior 26th of December, 1866. Then there was a withdrawal March 26, 1867, (Record, p. 57), as authorized by the act of 1866, which was strictly based on that act.

The plaintiff in error began its road at Junction City, near the Fort Riley reservation (p. 53, Finding 11), which was agreeable to the act of 1866, but not in conformity to that of July 1, 1864, which called for a point on the branch of the Union Pacific road, near Fort Riley.

Then the road of the plaintiff in error was built, and certified by the Governor in *ten mile sections*, (Record 53, Finding 11,) a method conforming to the act of 1866, but not allowed by the acts of 1864 and 1863, which required twenty mile sections. Next, simultaneous certificates were issued by the General Land Office for both granted tracts and indemnity, (Record, pp. 7, 8, 9, 10 and 11,) and that without regard to the length of the road completed. The certificate of the Governor of Kansas, on which the lists were based, recited the completion of the railroad of the plaintiff in error "from Junction City to the southern boundary of the State of Kansas." (Record, pp. 9–26.) This the act of 26th July, 1866, allowed, but the act of March 3, 1863, (section 4,) does not authorize the certifying of any indemnity lands (between the ten and twenty miles limits) until the whole of said roads and branches "are completed."

The defect in the title of the plaintiff in error here displayed, was sought to be covered by a *post facto* certificate of Governor Harvey, January 1st, 1873, (Record, p. 59,) though the plaintiff in error had received its deed from the State, dated January 15, 1872, (Record, p. 21,) for all the lands in controversy.

On general principles of law we claim that as the act of 26th July, 1866, required the plaintiff in error to accept its provisions in writing, which was done, there is now no other contract between the United States and the plaintiff in error as to the same subject matter—the building of a rail-

road from "near the Fort Riley Military Reservation to Emporia," &c.; that all prior negotiations and equities are merged in that contract. It is the whole of what both parties have agreed on, and no more can be added to it by reference to the former grants of March 3d, 1863, and July 1st, 1864, which it is not shown that the plaintiff in error ever did accept or agree to, or that the United States ever offered to it for its acceptance.

IV.

The two grants to the State, of 1864 and 1866, cannot be administered along the same line of railroad because of their differing provisions:

1. The act of 1864 offered a grant subject to the disposal of the State Legislature. That of 1866 was not subject to such disposal.

2. The act of 1864 proffered a grant of odd sections, with indemnity selections in other odd sections; that of 1866 allowed selections of both odd and even numbered sections. The Secretary of the Interior could not follow both laws at the same time. If he selected even sections he would violate the act of 1864; if he refused to do it, he would not conform to the act of 1866.

3. The grant of 1864 is limited in quantity by the odd-numbered tracts actually found within ten miles, not wholly excepted from the operation of the act; that of 1866 is larger; it is of five odd sections in width on each side—equal to ten sections per mile.

4. The act of 1864 imposed restrictions upon the State in disposing of the granted lands, which are essentially different from those imposed upon the plaintiff in error by the act of 1866.

By section 4 of the act of 1863, (12 Stat., 773,) on the completion first of a section of twenty and thereafter of other sections of twenty miles of road, the State may cause the granted lands to be sold *which lie opposite to such section and within ten miles of the line of road*, but the indemnity sections cannot be sold until after the entire line of road is completed. But, by the grant of 1866, the Southern Branch Company, on the completion of each section of ten miles, will be entitled to claim patents for the corresponding quantity of granted lands to the extent of *twenty* miles on each side, if it be necessary to go that far to obtain the ten sections per mile.

5. It is to be noticed that the law of 1864 requires the road to be completed in ten years from the date of the act, viz: July 1st, 1874, whilst the act of 1866 allows ten years from and after the acceptance of the grant by the company —December 26, 1876. Section 6 of the act of 1866 grants to the Southern Branch Company a roadway 200 feet wide; also, the privilege of taking building materials from public lands adjacent to the road, and ground for water stations, shops, depots, switches, &c., &c.

No such privileges were conceded in the prior law of 1864.

6. Section 11 of the act of 26th July, 1866, provides and gives authority for the consolidation of other companies with the Southern Branch Company *after its road is located "to the valley of the Neosho or Grand river."* It is not consistent with this provision to recognize a consolidation of another road with this as having been effected prior to the performance of the prescribed condition, viz: the location of the road to the valley of the Neosho river. A consolidation, to be within the terms of this act, must be made after the time prescribed. All other consolidations are forbidden by plain implication.

7. The terminus named in the act of 1864 is a "*point near Fort Riley*, on the Branch Union Pacific Railroad;" that is, a point on the Kansas Pacific road, at the fort called Fort Riley, and would be on the left bank of the Republican river; and the State law of 1864, February 9, section 3, required a road *intersecting* the Union Pacific Railroad, Eastern Division, *at Fort Riley*. But the law of 1866 allowed the Southern Branch Company to locate its road "from Fort Riley *or near said military reservation*." Under the alternative of "*near said military reservation*," the Southern Branch Company *has located its junction with the Kansas Pacific at Junction City*, on the west side of said reservation, and three miles from the fort.

This location of the terminus actually demonstrates the difference between the two laws and the two grants.

The conflicts which could arise with the Kansas Company by location of the route of the State road at and near this terminus under the two laws of July 1st, 1864, and July 26th, 1866, would be for different lands; and the further west the location is made, the more of the Kansas Company's lands would fall to the State, so that, if the "point of departure" was fixed twenty miles further west, the Kansas Company would be deprived of every acre of land on one side of its road for a distance of forty miles. The power to take the terminus three miles west of the point mentioned in the act of July 1st, 1864, and in the State law, could as well take it twenty miles.

8. The grant of lands by the act of July 1st, 1864, was made to aid in building a telegraph as well as railroad. The act of Congress of March 3d, 1863, required a telegraph on the Leavenworth, Lawrence and Galveston Line, and so did the State law quoted in the brief of counsel of the plaintiff in error.

The record in this case does not disclose evidence that a telegraph had been constructed when the lists of land

were certified to the State in December, 1871. Those certificates do not mention a telegraph; the findings of the court below do not state that a telegraph line had been constructed, or even commenced. It is recited in the patent of 15th January, 1872, that a telegraph had been built—but that recital is not shown to be true. It does appear from the record, that a telegraph is not named in the Governor's certificates to the Secretary of the Interior, and under the act of 1864, (sec. 4, act 1863,) no lists of lands farther than ten miles from the road could be legally selected, until the telegraph line was completed and that fact certified by the Governor, and recognized by the Secretary of the Interior.

9. It is declared (sec. 3, act 1863) that a road built under the act of July 1st, 1864, "shall be and remain a public highway for the use of the Government," &c. There is no such provision in the grant of July 26th, 1866.

10. The acts of 1863–64 did not provide for any withdrawal of lands along the proposed railways. No withdrawal was made under the act of 1864. But the act of 26th July, 1866, directed a withdrawal. Before this withdrawal was made the defendant in error had acquired all the lands in controversy.

11. The act of 26th July, 1866, (sec. 6,) granted a right of way—also, the privilege of taking material from the public lands for the construction of the railroad line. Nothing of the kind is found in the acts of 1863–64.

12. The act of 1866, directed patents to issue to plaintiff in error for its lands. The acts of 1863 and 1864 did not provide for patents.

13. The acts of 1863 and 1864 provided that the even sections remaining to the United States within ten miles should

not "become subject to sale at private entry, until the same "shall have been first offered at public sale to the highest "bidder, at or above the increase minimum price," of $2.50 per acre. There is no such provision in the act of 1866.

V.

The plaintiff in error took nothing by the assignment made March 19th, 1866, by the Atchison and Topeka Company.

On careful examination it will be found that the assignor had no interest in the grant of lands made by act of Congress of July 1st, 1864, for a railroad from the Branch Union Pacific Road to Emporia.

The provision in the law of Kansas, February 9th, 1864, cited by the plaintiff in error, was, "That if the Congress of the United States shall, on or before the 4th day of March, 1866, consent that the Neosho Valley branch of the above-named road may be extended so as to intersect the Union Pacific Railroad, Eastern Division, at or near Fort Riley, and shall make a grant of land for such extension of like amount with that granted per mile for the construction of the herein above-named principal road, then said Atchison, Topeka and Santa Fé Railroad Company shall proceed to construct such branch to such intersection, on the terms and conditions hereinabove prescribed applicable to the construction of such main road."

How can these words, in a statute of Kansas, be construed to convey any interest in the lands offered to the State by Congress in the act of July 1st, 1864?

Congress never consented that the Neosho Valley branch of the Atchison, Topeka and Santa Fé Railroad should be extended, and never made a grant to aid such extension. The law of 1st July, 1864, offered *a separate and independent grant* to the State; but the State did not accept it, nor did

the State convey it to any company, or enter upon the actual construction of a railroad and telegraph.

The act of the Legislature of Kansas just quoted contemplates something to be done by Congress which Congress has never done, and the contingency provided for in the State law of February 9th, 1864, has never occurred.

Had that act of the Kansas Legislature made a conveyance of lands to the Atchison, Topeka and Santa Fé Company, in advance of a grant by Congress, such conveyance in advance would not be valid and effectual in law.

It was held by the United States Supreme Court, in Rice *vs.* Railroad Company, (1 Black, 358,) that a grant by the Territorial Legislature of Minnesota to a railroad company of lands, which Congress might thereafter grant, did not operate so as to vest a title in the lands when afterwards granted by Congress to the Territory. For, says the court, "grants made by a Legislature are not warranties, and the rule universally applied in determining their effect is, that if the thing granted was not in the grantor at the time of the grant, no estate passes to the grantee." (Page 374; see also Bac. Abt., 514; 4 Cruise Dig., 52.)

It may also be said that the grant by act of July 1, 1864, would be subject to the disposal of the State Legislature after the grant had been made, and the power of disposal could not be exercised in advance without the express consent of Congress.

VI.

It is further urged that the Atchison, Topka and Santa Fé Company had no authority of law to construct either a railroad or telegraph line between Junction City and Emporia, and hence had not capacity to take any grant from the State for that purpose. This company was incorporated by the Territorial Legislature of Kansas, February 11th, 1859, (Record, 50, 128.) It was at first called the Atchison

and Topeka Railroad Company; its charter is found in chap. 47 of Private Laws, passed at the fifth session of the Legislative Assembly, p. 57. Its powers as a railroad corporation are defined in section 2, viz:

"The said company is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain, and operate a railroad with one or more tracks, from or near Atchison on the Missouri river, in Kansas Territory, to the town of Topeka in said Territory, and to such point on the southern or southwestern boundary of said Territory in the direction of Santa Fé, New Mexico, as may be most convenient, suitable for the construction of said road, and also to construct a branch of said railroad to any point on the southern boundary of said Territory of Kansas, in the direction of the Gulf of Mexico."

This charter does not authorize the company to build a road in the locality named in the act of Congress of July 1st, 1864, or a telegraph line anywhere, and the provision in the legislative act of February 9th, 1864, relied on by the plaintiff in error, (argument of Mr. Sears, pp. 6, 7, 8 and 9, and 5th finding for Defendant below, Record, 50, 129,) as authorizing said company to construct said road is inoperative and void, being contrary to the provisions of the State constitution of 1859:

Art. 2, *Sec.* 17. "All laws of a general nature shall have a uniform operation throughout the State, and in all cases where a general law can be made applicable, no special law shall be enacted."

Art. 12, *Sec.* 1. "The Legislature shall pass no act conferring corporate powers. Corporations may be created under general laws, but all such laws may be amended or repealed."

Sec. 6. "The term corporations, as used in this article, shall include all associations and joint stock companies, having powers and privileges not possessed by individuals or partnerships."

[Federal and State Constitutions, Ben Perley Poore, part 1, p. 629.]

The decisions of the courts of Kansas lead us to the general conclusion that the powers of a corporation existing in that State, by enactment of the Territorial Legislature, cannot be extended or enlarged by any special law of the State Legislature.

Atchison *vs.* Bartholow, 4 Kan., 124.
Wyandotte *vs.* Wood, 5 Kansas, 603.
Leavenworth Co. *vs.* Miller, 7 Kansas, 479.
Nat. Bank of Cleveland *vs.* Iola, 9 Kansas, 689.
Gilmore *vs.* Norton, 10 Kansas, 491.
Also see State of Ohio *vs.* Cincinnati, 20 Ohio, pp. 18–36.

And the joint resolution of the Legislature of Kansas of 26th February, 1867, purporting to ratify the transfer by assignment of one company to the other, is liable to the same objection, if it be claimed that thereby any authority was conferred on the Topeka Company to build a railroad from Junction City to Emporia, or to take a land grant for that purpose. The powers of the two contracting companies, the one to convey and the other to receive a land grant, do not appear to be sufficiently displayed in the record; but in the decisions cited it is made clear that the State Legislature could not, by a special curative act, confer powers that it could not directly confer by a law granting a charter, or amended charter, to the Atchison and Topeka Company.

And if no effect can be given to the prior State law, and the contract between the two companies, until after the passage of the joint resolution of 26th February, 1867, then the defendant in error has the prior title to the lands by virtue of withdrawals, location of route, and construction of road, all before that date.

From the above reasoning, it will appear that the plaintiff in error had no authority, by reason of the assignment of 19th March, 1866, either to build the railroad or take the

land grant. Whatever authority it has, is derived wholly from its own charter, and whatever land it has obtained from the United States it has right to only under and by reason of compliance with the grant made by Congress in the act of July 26, 1866.

VII.

Counsel for the plaintiff in error has asked that great weight be given to the fact that the Department of the Interior, in 1871, decided in favor of that company, and issued lists to the State. It is, however, a noteworthy fact that the plaintiff in error has nowhere, either in the record or argument, endeavored to sustain the mistaken views under which the certificates of December, 1871, were issued to the State. Secretary Delano held that the defendant in error had no grant of lands west of the meridian of Fort Riley until the passage of the act of March 3d, 1869. This decision was made in contravention of the deliberate and uniform action of his predecessors and of the President of the United States, from July 3, 1866, up to the date of Mr. Delano's decision. The road and telegraph line of the defendant in error had been constructed and accepted by the President of the United States, and bonds of the United States delivered to it, and patents for lands ordered, on the route authorized by the act of July 3, 1866, prior to March 3, 1869, as far as the 394th mile post from Kansas City. The road from 130th to 155th mile was accepted January 22, 1867, (Record, 46, 118), from 155th to 185th and 185th to 210th mile post, June 10th, 1867, (Record, 48, 122,) and from 210th to 234th mile post, August 12, 1867, (Record, 48, 123.) The record does not disclose the date of the acceptance of further sections, but the historical fact, derived from official reports, is, that the road and telegraph were completed 393$\frac{5}{16}$ miles, and the subsidy of $6,303,000 in United States currency bonds had been delivered prior to March 3, 1869.

By the acts of 1862, 1864 and 1866, the authority to accept the completed road and telegraph was conferred on the President of the United States, and by section 4, act 1862, the issuing of patents for land was placed under his direct jurisdiction and control, and this accords with the general laws relating to issuing land patents.

McGarrahan *vs.* Secretary Interior, 9th Wallace, 314.

Secretary Delano based his rejection of the application of the defendant in error for patents to the lands in controversy upon the fact that the company had not procured the formal approval, by the President of the United States, of its route west of the meridian of Fort Riley. This was the merest technicality, for the record shows that the President did accept the road as having been constructed according to the acts of 1862 and 1864, and this was done prior to the act of March 3, 1869, up to the 394th mile.

The position of the Secretary, in December, 1871, in rejecting the claim of the Kansas Company for patents, was hostile to five years of preceding Executive action and decision, and to the position of this court in the cases of Prescott & Culp, Nos. 388 and 389, decided at the December term, 1872. (16 Wallace, 603.) At p. 610, it is stated, *arguendo:* "We think that though the line of the road had "been built, and approved by the President so far as to au- "thorize the company to obtain a patent for this land, if "they had paid the cost of survey," &c.

The land involved in Prescott's case was the N½ of the SW¼ and W½ of SE¼ of section 3, T. 13 S., R. 1 W., tracts which, by reference to the map in the record in this case, it will appear lie about thirty miles west of Junction City, and further west than any lands involved in this suit. The tract in Culp's case was the NE¼ of section 31, T. 7 S., R. 4 W., a little further west than Prescott's.

VIII.

But if the propriety of Secretary Delano's view were now open for argument, it might be said that the second proviso of the 9th section of the act of July, 2, 1864, wholly relieved the Kansas Pacific and all other branch companies from the obligation to build to said initial point, and expressly conferred on each company the privilege of uniting with the Union Pacific Road at any point in its own discretion west of the 100th meridian.

The original object was to have all the branch roads converge at the initial point on the 100th meridian. That object was wholly abandoned in 1864, and the discretion of the company was substituted for the will of the President. Each branch company could adopt its own line and unite whereever it chose. The only restriction on the companies retained in this act is found in the 3d proviso of said 9th section, to wit:

"That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided if the same had united with the Union Pacific Railroad on 100th degree of longitude; nor shall such company be entitled to any greater amount of alternate sections of public lands than are also herein provided."

This law did not require the President of the United States to approve a route when selected by a company, and this view was accepted by Congress in section 2d, act of July 3, 1866, authorizing the Union Pacific Company to build its road without reference to any initial point—this being the same law which authorized the defendant in error to locate its road west of Fort Riley, upon the Smoky Hill route.

In *point of law the President was not required to approve the new location, but in point of fact he did do it*, when a map of the new route was accepted, and, *a fortiori*, when the road

was accepted by him as having been constructed as the laws required.

The requirement in section 1, of the act of 1866, that the Secretary of the Interior should withdraw lands along the new line of road, would have been absurd, had there been no grant of lands made by the prior laws of which this was amendatory. And unless those laws were referred to, how could any withdrawal be made? If they did not offer the basis, the Secretary could have withdrawn lands, for one mile wide or one hundred—on one side of the line or on both—by townships or by sections—in even numbers or in odd; in fact, he would have had no basis to act upon.

In the interests of brevity, the withdrawal instructions of 1866 are omitted from the Record, but we find the substance of them, (pp. 45, 115,) where it is recited that the Secretary of the Interior, in compliance with said act of 1866, directed and caused the withdrawal of *all* the *odd sections within twenty-five miles* of this railroad, as shown on the accompanying diagram, and by the line of route delineated on the map filed by the company under said law.

This reasoning loses none of its force by a correct judgment upon the act of 3d March, 1869. (15 Stat., p. 324.)

At that date the Kansas Company had received all the bond subsidy it could obtain, and its road was built to Sheridan, four hundred miles west of Kansas City. By that act it obtained very great advantages; it was allowed to build to Denver, and there to have the Denver Pacific Road taken to complete the connection with the Union Pacific Road. Congressional sanction was given to the borrowing of money on its road beyond and west of the subsidized portion, and a doubt existing in the construction of section 9, act July 2, 1864, was removed.

The last clause of that section was as follows: "Nor "shall said company be entitled to receive any greater "amount of alternate sections of public lands than are also "herein provided."

The obvious meaning of this, and the construction adopted and acted upon by the executive officers, was that the company should have no more than ten alternate sections per mile on each side of the new (and lengthened) route; yet it could be plausibly construed to mean that the land grants were not to extend a greater distance along the new line, or to take a greater number of alternate sections, than if the roads had been built to unite at the initial point on the 100th meridian. The act of 1869, settled all doubt. The land grant continued beyond the 394th mile to Denver—and thence on the Denver road to Cheyenne—the lateral limits and conditions being the same as upon that part lying eastward of the 394th mile post.

IX.

In construing the grants by Congress, under which this suit has arisen, the differing nature of the laws applicable to the titles of the two parties, may properly be considered.

The Pacific Railroad grants are of specific tracts within twenty miles of the roads. For tracts that would otherwise be granted, but are excepted from grant, there is no indemnity in other lands bestowed. Looking to the public objects sought by those laws, and the desirableness of an early settlement of the country through which the roads were to be built, there was no provision of law for the increase of the price in the alternate sections of even numbers retained by the United States, until the law of March 6th, 1868, (15 Stat., p. 39.) The grant of odd-numbered tracts was absolute, and the excepted tracts were wholly lost to the grantee. The policy of compensation to the Government by an increase of price of the even sections was not introduced into the laws under which the roads were built. To protect the grants till the roads should be located, withdrawals of land were required by statutory provisions.

But with the grants under which the plaintiff in error

claims, the case is otherwise. Where there are exceptions from the grant by limitation "a," it is declared that the Secretary of the Interior shall select other lands which "*shall be held by the State of Kansas for the use and purpose aforesaid.*" Not only shall the excepted tracts not be held, but other tracts *shall be held;* and in this cas all public lands, of both odd and even numbers—outside of ten and within twenty miles of the road, may be taken. The provision for indemnity to such an unusual, nay unprecedented extent, is an indication of the understanding at the date of the grant of July 26th, 1866, both by the Southern Branch Company and Congress, that the grantee would experience an unusual loss of lands, within the actual limits of its grant, by a location of its road as that law required; for at the date of its passage, the 6th section of the Kansas Pacific Railroad had been located by survey, and was in process of construction, west of the Fort Riley military reservation.

The defendant in error claims that the judgment of the Supreme court of the State of Kansas should, in all things, be affirmed by this court.

Respectfully submitted.

HENRY BEARD,
Of Counsel for Def't in Error.

APPENDIX.

CHAP. CXCVIII.—*An act making an additional Grant of Lands to the State of Kansas to aid in the Construction of Railroads and Telegraph Lines.*

July 1, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the State of Kansas, to aid in the construction of a railroad and telegraph line from Emporia, via Council Grove, to a point near Fort Riley, on the branch Union Pacific Railroad, in said State, every alternate section of land designated by odd numbers for ten sections in width on each side of said road: *Provided*, That this grant shall be subject to all the provisions, restrictions, limitations, and conditions, in regard to selection and location of lands and otherwise, of an act of Congress approved March three, eighteen hundred and sixty-three, entitled "An act for a grant of lands to the State of Kansas, in alternate sections, to aid in the construction of certain railroads and telegraphs in said State:" *Provided*, That said railroad shall be a public highway, and shall transport troops and munitions of war of the United States free of charge.

Lands granted to Kansas for railroads and telegraphs.

Grant subject to conditions.

1863, ch 98. Vol. xii, p. 772.

Railroad to be a public highway.

SEC. 2. *And be it further enacted*, That the branch railroad and telegraph from "Lawrence, by the valley of the Wakarusa River, to a point on the Atchison, Topeka, and Santa Fé Railroad, where said road intersects the Neosho River," to aid in the construction of which a grant of lands was made by the said act of third of March, eighteen hundred and sixty-three, shall be so changed as to run from Lawrence to Emporia, and have and receive the grant of lands made by said act: *Provided*, That the line of railroad and telegraph from Leavenworth, by way of Lawrence and the Ohio City crossing of the Osage River, to the southern line of the State in the direction of Galveston bay, shall run via Baldwin city.

Route of a certain railroad and telegraph changed.

Proviso.

APPROVED, July 1, 1864.

CHAP. XCVIII.—*An act for a Grant of Lands to the State of Kansas, in alternate Sections, to aid in the Construction of certain Railroads and Telegraphs in said State.*

March 3, 1863.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to the State of Kansas, for the purpose of aiding in the construction: First, of a railroad and telegraph from the city Leavenworth by the way of the town of Lawrence, and via the Ohio City crossing of the Osage River, to the southern line of the State, in the direction

Alternate sections of land, &c., granted to Kansas to aid in construction of railroads.

of Galveston bay in Texas, with a branch from Lawrence by the valley of the Wakarusa River, to the point on the Atchison, Topeka, and Santa Fe Railroad where said road intersects the Neosho River. Second, of a railroad from the city of Atchison, via Topeka, the capital of said State, to the western line of the State, in the direction of Fort Union and Santa Fé, New Mexico, with a branch from where this last-named road crosses the Neosho, down said Neosho valley to the point where the said first-named road enters the said Neosho valley; every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road and each of its branches. But in case it shall appear that the United States have, when the lines or routes of said road and branches are definitely fixed, sold any section or any part thereof, granted as aforesaid, or that the right of preemption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the purposes aforesaid, from the public lands of the United States nearest to tiers of sections above specified, so much land in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the rights of pre-emption or homestead settlements have attached, as aforesaid; which lands, thus indicated by odd numbers, and selected by direction of the Secretary of the Interior as aforesaid, shall be held by the State of Kansas for the use and purpose aforesaid: *Provided*, That the land to be so selected shall, in no case, be located further than twenty miles from the lines of said road and branches: *Provided further*, That the lands hereby granted for and on account of said roads and branches severally, shall be exclusively applied in the construction of the same, and for no other purpose whatever, and shall be disposed of only as the work progresses through the same, as in this act hereinafter provided: *Provided, also*, That no part of the land granted by this act shall be applied to aid in the construction of any railroad or part thereof, for the construction of which any previous grant of land or bonds may have been made by Congress: *And provided, further*, That any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operations of this act, except so far as it may be found necessary to locate the routes of said road and branches through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the President of the United States.

If any section has been sold, &c., an equal quantity to be given in lieu thereof.

Proviso.

To what roads only this land to be applied.

Certain lands not within this act.

Sections remaining to the United States not to be sold for less than double the minimum price.

not to be subject to private entry until offered at public sale to highest bidder.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States, within ten miles on each side of said road and branches, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder, at or above the increased minimum price, as aforesaid; *Provided*, That actual and bona fide settlers, under the provi-

sions of the pre-emption and homestead laws of the United States, may, after due proof of settlement, improvement, cultivation, and occupation, as now provided by law, purchase the same, at the increased minimum price aforesaid: *And provided, also,* That settlers on any of said reserved sections, under the provisions of the homestead law, who improve, occupy, and cultivate the same for a period of five years, and comply with the several conditions and requirements of said act, shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

Settlers on reserved sections.

SEC. 3. *And be it further enacted,* That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and the said railroads and branches shall be and remain public highways, for the use of the Government of the United States, free from all toll or other charge upon the transportation of any property or troops of the United States.

Lands granted only for what purposes.
Roads &c., to be public highways, &c.

SEC. 4. *And be it further enacted,* That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: When the governor of said State shall certify to the Secretary of the Interior that any twenty consecutive miles of either of said roads or branches is completed in a good, substantial, and workmanlike manner, as a first-class railroad, and the said Secretary shall be satisfied that said State has complied in good faith with this requirement, the said State may cause to be sold all the lands granted as aforesaid situated opposite to and within a limit of ten miles of the line of said section of road thus completed, extending along the whole length of said completed section of twenty miles of road, and no further. And when the governor of said State shall certify to the Secretary of the Interior, and the Secretary shall be satisfied, that another section of said roads or branches, twenty consecutive miles in extent, connecting with the preceding section, is completed as aforesaid, the said State may cause to be sold all the lands granted and situated opposite to and within the limit of ten miles of the line of said completed section of road, and extending the length of said section, and so, from time to time, until said roads and branches are completed. And when the governor of said State shall so certify, and the Secretary of the Interior shall be satisfied, that the whole of said roads and branches and telegraph are completed in a good, substantial, and workmanlike manner, as first-class railroads and telegraph, the said State may cause to be sold all the remaining lands granted and selected for the purposes indicated in this act situated within the said limits of twenty miles from the line thereof throughout the entire length of said road and branches: *Provided,* That if any part of said roads and branches is not completed within ten years from the passage of this act, no further sale shall be made, and the lands unsold shall revert to the United States.

How lands may be disposed of

Upon completion of any twenty consecutive miles of a road or branch, &c.

Upon completion of second section of twenty miles, &c.

Upon completion of whole road, &c.

Roads to be completed within ten years.

SEC. 5. *And be it further enacted,* That the United States mail shall be transported over said roads and branches, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided,* That until such price is fixed by law the Postmaster General shall have the power to determine the same.

Mail to be transported over road, &c.

APPROVED, March 3, 1863.

July 26, 1866.

CHAP. CCLXX.—*An Act granting Lands to the State of Kansas to aid in the Construction of a southern Branch of Union Pacific Railway and Telegraph, from Fort Riley, Kansas, to Fort Smith, Arkansas.*

Public lands granted to Kansas to aid in construction of a railroad and telegraph from Fort Riley to Fort Smith.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding the Union Pacific Railroad Company, southern branch, the same being a corporation organized under the laws of the State of Kansas to construct and operate a railroad from Fort Riley, Kansas, or near said military reservation, thence down the valley of the Neosho river to the southern line of the State of Kansas, with a view to an extension of the same through a portion of the Indian Territory to Fort Smith, Arkansas, there is hereby granted to the State of Kansas, for the use and benefit of said railroad company, every alternate section of land or parts thereof designated by odd numbers, to the extent of five alternate sections per mile on each side of said road and not exceeding in all ten sections per mile; but in case it shall appear that the United States have, when the line of said road is definitely located, sold any section, or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid, from the public lands of the United States nearest to the sections above specified, so much land as shall be equal to the amount of such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement or pre-emption has attached as aforesaid, which lands, thus indicated by the direction of the Secretary of the Interior, shall be reserved and held for the State of Kansas for the use of said company by the said Secretary for the purpose of the construction and operation of said railroad, as provided by this act: *Provided*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever be, and the same are hereby, reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the route of said road through such reserved lands, in which case the right of way, two hundred feet in width, is hereby granted, subject to the approval of the President of the United States: *And provided, further*, That said lands hereby granted shall not be selected beyond twenty miles from the line of said road.

If any of granted lands have been sold or reserved, &c., other lands may be selected in lieu thereof.

Lands heretofore reserved excepted from this act.

Right of way granted.

Lands not to be selected beyond twenty miles from line of road.

Remaining lands, &c., not to be sold for less than double the minimum price.

Settlers under pre-emption laws;

Under the homestead act.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by the aforesaid grant shall remain in the United States, within ten miles on each side of said road, shall not be sold for less than double the minimum price of public lands when sold: *Provided*, That actual bona fide settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement, and occupation: *Provided, also*, That settlers under provisions of the homestead act, who make their settlement after the passage of this act and comply with the terms and require-

ments of said act, shall be entitled, within the said limits of ten miles, to patents for an amount not exceeding eighty acres each.

Conditions of this grant.

SEC. 3. *And be it further enacted*, That the grant of lands hereby made is upon condition that said company, after the construction of its road, shall keep it in repair and use, and shall at all times transport troops, munitions of war, supplies, and public stores upon its roads for the government of the United States, free from all cost or charge therefor to the government, when required to do so by any department thereof. And the lands hereby granted shall inure to the benefit of said company, as follows: When the governor of the State of Kansas shall certify that any section of ten consecutive miles of said road is completed in a good, substantial, and workmanlike manner as a first-class railroad, then the said Secretary of the Interior shall issue to the said company patents for so many sections of the land herein granted within the limits above named, and coterminous with said completed section hereinbefore granted; and when certificates of the governor aforesaid shall be presented to said Secretary of the completion, as aforesaid, of each successive section of ten consecutive miles of said road, the said Secretary shall in like manner issue to said company patents for the land for each of said sections of road as in the first instance, until said road shall be completed: *Provided*, That if said road is not completed within ten years from the date of the acceptance of the grant hereinbefore made, the lands remaining unpatented shall revert to the United States.

Granted lands to inure to benefit of company as follows.

If road is not completed in ten years, unpatented lands to revert.

When maps of route of road are filed, lands to be withdrawn from market.

SEC. 4. *And be it further enacted*, That as soon as said company shall file with the Secretary of the Interior maps of its line, designating the route thereof, it shall be the duty of said Secretary to withdraw from the market the lands granted by this act, in such manner as may be best calculated to effect the purposes of this act and subserve the public interest.

United States mail to be carried.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported on said road, and under the direction of the Post Office Department, at such price as Congress may by law provide: *Provided*, That until such price is fixed by law the Postmaster-General shall have power to fix the compensation.

Right of way through public lands granted for the railroad.

Materials for construction.

Extent of grant of right of way.

Grounds for stations, &c.

SEC. 6. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to said Pacific Railroad Company, southern branch, its successors and assigns, for the construction of a railroad as proposed: and the right is hereby given to said corporation to take from the public lands adjacent to the line of said road material for the construction thereof. Said way is granted to said railroad to the extent of one hundred feet in width on each side of said road where it may pass through the public domain; also all necessary ground for station buildings, workshops, depots, machine-shops, switches, side tracks, turn-tables, and water stations.

Acceptance of terms, &c., of this act to be in writing and within one year.

SEC. 7. *And be it further enacted*, That the acceptance of the terms, conditions, and impositions of this act by the said Pacific Railroad Company, southern branch, shall be signified in writing, under the corporate seal of the said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within

one year after the passage of this act, and not afterwards, and shall be deposited with the Secretary of the Interior.

Pacific Railroad Company, southern branch, may extend its road, through Indian Territory, by consent, to Fort Smith.

SEC. 8. *And be it further enacted*, That said Pacific Railroad Company, southern branch, its successors and assigns, is hereby authorized and empowered to extend and construct its railroad from the southern boundary of Kansas, south through the Indian Territory, with the consent of the Indians, and not otherwise, along the valley of Grand and Arkansas rivers, to Fort Smith, in the State of Arkansas; and the right of way through said Indian Territory is hereby granted to said company, its successors and assigns, to the extent of one hundred feet on each side of said road or roads, and all necessary grounds for stations, buildings, work-shops, machine-shops, switches, side tracks, turn-tables, and water stations.

Right of way through Indian Territory, and ground for stations, &c.

When Indian title is extinguished in Indian Territory, and lands become public lands, grant thereof to company.

SEC. 9. *And be it further enacted*, That the same grant[s] of lands through said Indian Territory are hereby made as provided in the first section of this act, whenever the Indian title shall be extinguished by treaty or otherwise, not to exceed the ratio per mile granted in the first section of this act: *Provided*, That said lands become a part of the public lands of the United States.

Company may acquire title from certain Indians.

SEC. 10. *And be it further enacted*, That said Pacific Railroad Company, southern branch, its successors and assigns, shall have the right to negotiate with, and acquire title to land for railroad purposes from any Indian nation or tribe authorized by the United States to dispose of lands, and from any other nation or tribe of Indians through whose lands said railroad may pass, subject to the approval of the United States, or from any company or parties incorporated or authorized for such purposes, by such nation or tribe, or which such parties may have acquired under the laws of the United States.

Any railroad company may unite with this company, after, &c.

SEC. 11. *And be it further enacted*, That any railroad company chartered under any law of the United States, or of any State which may have been heretofore or shall hereafter be organized by any act of the Congress of the United States, may connect, unite, and consolidate with this railroad company, after the same shall be located to the valley of the Neosho or Grand river, upon just, fair, and equitable terms, to be agreed upon between the parties, as shall not be against the public interest, or the interest of the United States.

APPROVED July 26, 1866.

ACTS OF CONGRESS

RELATING TO THE

UNION PACIFIC RAILROAD

AND BRANCHES.

COMPILED [illegible]

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PACIFIC RAILROAD ACTS.

ACT OF JULY 1, 1862.

[12 Statutes at Large, 489.]

AN ACT to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Walter S. Burgess, William P. Blodget, Benjamin H. Cheever, Charles Fosdick Fletcher, of Rhode Island; Augustus Brewster, Henry P. Haven, Cornelius S. Bushnell, Henry Hammond, of Connecticut; Isaac Sherman, Dean Richmond, Royal Phelps, William H. Ferry, Henry A. Paddock, Lewis J. Stancliff, Charles A. Secor, Samuel R. Campbell, Alfred E. Tilton, John Anderson, Azariah Boody, John S. Kennedy, H. Carver, Joseph Field, Benjamin F. Camp, Orville W. Childs, Alexander J. Bergen, Ben. Holliday, D. M. Barney, S. De Witt Bloodgood, William H. Grant, Thos. W. Olcott, Samuel B. Ruggles, James B. Wilson, of New York; Ephraim Marsh, Charles M. Harker, of New Jersey; John Edgar Thompson, Benjamin Haywood, Joseph H. Scranton, Joseph Harrison, George W. Cass, John H. Bryant, Daniel J. Morell, Thomas M. Howe, William F. Johnson, Robert Finney, John A. Green, E. R. Myre, Charles F. Wells, jr., of Pennsylvania; Noah L. Wilson, Amos Stone, William H. Clement, S. S. L'Hommedieu, John Brough, William Dennison, Jacob Blickinsderfer, of Ohio; William M. McPherson, R. W. Wells, Willard P. Hall, Armstrong Beatty, John Corby, of Missouri; S. J. Hensley, Peter Donahue, C. P. Huntingdon, T. D. Judah, James Bailey, James T. Ryan, Charles Hosmer, Charles Marsh, D. O. Mills, Samuel Bell, Louis McLane, George W. Mowe, Charles McLaughlin, Timothy Dame, John R. Robinson, of California; John Atchison and John D. Winters, of the Territory of Nevada; John D. Campbell, R. N. Rice, Charles A. Trowbridge, Ransom Gardner, Charles W. Penny, Charles T. Gorham, William McConnell, of Michigan; William F. Coolbaugh,

Lucius H. Langworthy, Hugh T. Reid, Hoyt Sherman, Lyman Cook, Samuel R. Curtis, Lewis A. Thomas, Platt Smith, of Iowa; William B. Ogden, Charles G. Hammond, Henry Farnum, Amos C. Babcock, W. Seldon Gale, Nehemiah Bushnell, and Lorenzo Bull, of Illinois; William H. Swift, Samuel T. Dana, John Bertram, Franklin S. Stevens, Edward R. Tinker, of Massachusetts; Franklin Gorin, Laban J. Bradford, and John T. Levis, of Kentucky; James Dunning, John M. Wood, Edwin Noyes, Joseph Eaton, of Maine; Henry H. Baxter, George W. Collamer, Henry Keyes, Thomas H. Canfield, of Vermont; William S. Ladd, A. M. Berry, Benjamin F. Harding, of Oregon; William Bunn, junior, John Catlin, Levi Sterling, John Thompson, Elihu L. Phillips, Walter D. McIndoe, T. B. Stoddard, E. H. Broadhead, A. H. Virgin, of Wisconsin; Charles Paine, Thomas A. Morris, David E. Brandham, Samuel Hanna, Jonas Votaw, Jesse L. Williams, Isaac C. Elston, of Indiana; Thomas Swan, Chauncey Brooks, Edward Wilkins, of Maryland; Francis R. E. Cornell, David Blakely, A. D. Seward, Henry A. Swift, Dwight Woodbury, John McKusick, John R. Jones, of Minnesota; Joseph A. Gilmore, Charles W. Woodman, of New Hampshire; W. H. Grimes, J. C. Stone, Chester Thomas, John Kerr, Werter R. Davis, Luther C. Challis, Josiah Miller, of Kansas; Gilbert C. Monell, and Augustus Kountz, T. M. Marquette, William H. Taylor, Alvin Saunders, of Nebraska; and John Evans, of Colorado; together with five commissioners to be appointed by the Secretary of the Interior, and all persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic in deed and in law, by the name, style, and title of "The Union Pacific Railroad Company;" and by that name shall have perpetual succession, and shall be able to sue and to be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph, with the appurtenances, from a point on the one-hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican river and the north margin of the valley of the Platte river, in the Territory of Nebraska, to the western boundary of Nevada Territory, upon the route and terms hereinafter provided, and is hereby vested with all the powers, privileges, and immunities

Name and title.

May sue and be sued in all courts.

Initial point.

necessary to carry into effect the purposes of this act as herein set forth. The capital stock of said company shall consist of one hundred thousand shares of one thousand dollars each, which shall be subscribed for and held in not more than two hundred shares by any one person, and shall be transferable in such manner as the by-laws of said corporation shall provide. The persons hereinbefore named, together with those to be appointed by the Secretary of the Interior, are hereby constituted and appointed commissioners, and such body shall be called the Board of Commissioners of the Union Pacific Railroad and Telegraph Company, and twenty-five shall constitute a quorum for the transaction of business. The first meeting of said board shall be held at Chicago, at such time as the commissioners from Illinois herein named shall appoint, not more than three nor less than one month after the passage of this act, notice of which shall be given by them to the other commissioners by depositing a call thereof in the post-office at Chicago, post-paid, to their address, at least forty days before said meeting, and also by publishing said notice in one daily newspaper in each of the cities of Chicago and St. Louis. Said board shall organize by the choice from its number of a president, secretary, and treasurer, and they shall require from said treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof as they may deem proper. It shall be the duty of said Board of Commissioners to open books, or cause books to be opened, at such times and in such principal cities in the United States as they or a quorum of them shall determine, to receive subscriptions to the capital stock of said corporation, and a cash payment of ten per centum on all subscriptions, and to receipt therefor. So soon as two thousand shares shall be in good faith subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said Board of Commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each state in which subscription-books have been opened, at least thirty days previous to the day of meeting, and such subscribers as shall attend the meeting so called, either in person or by proxy, shall then and there elect by ballot not less than thirteen directors for said corporation; and in such election each share of said capital shall entitle the owner thereof to one vote. The president and secretary of the Board of Commissioners shall

Capital stock.

Amount and number of shares of stock altered in sec. 1, act 1864.

Commissioners to organize.

Quorum.

Treasurer to give bond, &c.

Books to be kept open.

First meeting of stockholders.

To elect directors. See sec. 13, act of 1864.

act as inspectors of said election, and shall certify under their hands the names of the directors elected at said meeting, and the said commissioners, treasurer, and secretary shall then deliver over to said directors all the properties, subscription-books, and other books in their possession, and thereupon the duties of said commissioners and the officers previously appointed by them shall cease and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. At the time of the first and each triennial election of directors by the stockholders, two additional directors shall be appointed by the President of the United States, who shall act with the body of directors, and to be denominated directors on the part of the government; any vacancy happening in the government directors at any time may be filled by the President of the United States. The directors to be appointed by the President shall not be stockholders in the Union Pacific Railroad Company. The directors so chosen shall, as soon as may be after their election, elect from their own number a president and vice-president, and shall also elect a treasurer and secretary. No person shall be a director in said company unless he shall be a bona fide owner of at least five shares of stock in the said company, except the two directors to be appointed by the President as aforesaid. Said company, at any regular meeting of the stockholders called for that purpose, shall have power to make by-laws, rules, and regulations as they shall deem needful and proper, touching the disposition of the stock, property, estate, and effects of the company, not inconsistent herewith, the transfer of shares, the term of office, duties and conduct of their officers and servants, and all matters whatsoever which may appertain to the concerns of said company; and the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of this act, and to do all acts and things touching the location and construction of said road and telegraph. Said directors may require payment of subscriptions to the capital stock after due notice, at such times and in such proportions as they shall deem necessary to complete the railroad and telegraph within the time in this act prescribed. Said president, vice-president, and directors shall hold their office for three years, and until their successors are duly elected and qualified, or for such less time as the by-laws of the corporation may prescribe; and a majority of said directors shall constitute a quorum for the transaction of business. The secretary and treas-

Books and property to be delivered to directors.

Two directors to be appointed by the President of the U.S.

By act of 1864 altered to 5. Sec. 13, 1864.

Amended by sec. 1, 1864.

Company to make by-laws.

Directors to appoint agents.

Directors to require payment of subscriptions. Sec. 2, act of 1864.

Officers to hold for three years, altered by sec. 13, 1864.

urer shall give such bonds, with such security, as the said board shall from time to time require, and shall hold their offices at the will and pleasure of the directors. Annual meetings of the stockholders of the said corporation, for the choice of officers (when they are to be chosen) and for the transaction of annual business, shall be holden at such time and place and upon such notice as may be prescribed in the by-laws.

Right of way granted.

SEC. 2. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to said company for the construction of said railroad and telegraph line; and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad, where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops and depots, machine shops, switches, side tracks, turn-tables, and water stations. The United States shall extinguish as rapidly as may be, the Indian titles to all lands falling under the operation of this act, and required for the said right of way and grants hereinafter made.

See Sec. 3, 1864.

U. S. to extinguish Indian titles. Sec. 18, 1864.

Land grants. Alternate sections.

SEC. 3. *And be it further enacted*, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of *five* alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of ten miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed: *Provided*, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company. And all such lands so granted by this section which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and pre-emption like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company.

Changed to ten by Sec. 4, 1864, and grant to twenty miles.

Minerals and timbers. Sec. 4, 1864.

On completion of 40 miles (changed to twenty by Sec. 6, 1864) U. S. Com'rs to examine.

SEC. 4. *And be it further enacted*, That whenever said company shall have completed forty consecutive miles of any portion of said railroad or telegraph line ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture, and all other appurtenances of a first-class railroad—the rails and all the other iron used in the construction and equipment of said road to be American manufacture of the best quality,—the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that forty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road, as far as the same is completed, to the amount aforesaid; and patents shall in like manner issue as each forty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. Any vacancies occurring in said board of commissioners by death, resignation, or otherwise, shall be filled by the President of the United States: *Provided, however*, That no such commissioners shall be appointed by the President of the United States unless there shall be presented to him a statement, verified on oath by the president of said company, that such forty miles have been completed in the manner required by this act, and setting forth with certainty the points where such forty miles begin and where the same end; which oath shall be taken before a judge of a court of record.

And patents of land to issue.

Vacancy in Com'rs. See Sec. 8, act of 1864.

Government bonds. See sec. 8, act 1864, also sec. 10.

Now 20 miles. Sec. 10, 1864.

See sec. 11 of this act for $32,000 and $48,000 per mile.

SEC. 5. *And be it further enacted*, That for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest (said interest payable semi-annually), which interest may be paid in United States treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal-tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so

issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued; and on refusal or failure of said company to redeem said bonds or any part of them, when required to do so by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury for the use and benefit of the United States: *Provided*, This section shall not apply to that part of any road now constructed.

Lien of U. S. bonds made subordinate. See sec. 10, act of 1864.

See sec. 10, act 1864.

Modified. See sec. 5, act of 1864.

SEC. 6. *And be it further enacted*, That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid, (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service); and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.

Bonds, when and how paid.

Government transportation-half to be paid in cash. See sec. 5, act of 1864.

SEC. 7. *And be it further enacted*, That said company shall file their assent to this act, under the seal of said company, in the Department of the Interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning, as herein provided, to the western boundary of Nevada Territory, before the first day of July, one thousand

Assent of Company to be filed.

eight hundred and seventy-four: *Provided*, That within two years after the passage of this act said company shall designate the general route of said road, as near as may be, and shall file a map of the same in the Department of the Interior, whereupon the Secretary of the Interior shall cause the lands within fifteen miles of said designated route or routes to be withdrawn from pre-emption, private entry, and sale; and when any portion of said route shall be finally located, the Secretary of the Interior shall cause the said lands hereinbefore granted, to be surveyed and set off as fast as may be necessary for the purposes herein named: *Provided*, That in fixing the point of connection of the main trunk with the eastern connections it shall be fixed at the most practicable point for the construction of the Iowa and Missouri branches, as hereinafter provided.

Time of completion extended; see section 6, 1864.

See section 4, act of 1864. Map, &c., designating route to be filed.

Lands designated, &c.

SEC. 8. *And be it further enacted*, That the line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican river and the north margin of the valley of the Platte river, in the Territory of Nebraska, at a point to be fixed by the President of the United States, after actual surveys; thence running westerly upon the most direct, central, and practicable route, through the territories of the United States, to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

From 100th meridian to Nevada.

See sec. 10 of this act.

SEC. 9. *And be it further enacted*, That the Leavenworth, Pawnee and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line from the Missouri river, at the mouth of the Kansas river, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point on the one-hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned, and to meet and connect with the same at the meridian of longitude aforesaid; and in case the general route or line of road from the Missouri river to the Rocky Mountains should be so located as to require a departure northwardly from the proposed line of said Kansas railroad before it reaches the meridian of longitude aforesaid, the location of said Kansas road shall be made so as to conform thereto; and said railroad through Kansas shall be so located between the mouth of the Kan-

Kansas Co. to construct road, &c.

sas river, as aforesaid, and the aforesaid point on the one-hundredth meridian of longitude, that the several railroads from Missouri and Iowa, herein authorized to connect with the same, can make connection within the limits prescribed in this act, provided the same can be done without deviating from the general direction of the whole line to the Pacific coast. The route in Kansas west of the meridian of Fort Riley, to the aforesaid point on the one-hundredth meridian of longitude, to be subject to the approval of the President of the United States, and to be determined by him on actual survey. And said Kansas company may proceed to build said railroad to the aforesaid point on the one-hundredth meridian of longitude west from Greenwich, in the Territory of Nebraska. The Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, are hereby authorized to construct a railroad and telegraph line from the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento river, to the eastern boundary of California, upon the same terms and conditions, in all respects, as are contained in this act for the construction of said railroad and telegraph line first-mentioned, and to meet and connect with the first-mentioned railroad and telegraph line on the eastern boundary of California. Each of said companies shall file their acceptance of the conditions of this act in the Department of the Interior within six months after the passage of this act.

Central Pacific R. R. Co. of California authorized to construct road on same terms and conditions.

SEC. 10. *And be it further enacted*, That the said company chartered by the State of Kansas shall complete one hundred miles of their said road, commencing at the mouth of the Kansas river, as aforesaid, within two years after filing their assent to the conditions of this act, as herein provided, and one hundred miles per year thereafter until the whole is completed; and the said Central Pacific Railroad Company of California shall complete fifty miles of their said road within two years after filing their assent to the provisions of this act, as herein provided, and fifty miles per year thereafter until the whole is completed; and after completing their roads, respectively, said companies, or either of them, may unite upon equal terms with the first-named company in constructing so much of said railroad and telegraph line and branch railroads and telegraph lines in this act hereinafter mentioned, through the territories, from the State of California to the Missouri river, as shall then remain to be constructed, on the same terms and conditions as provided in this act in relation to the said Union Pacific

Time of doing work.

Changed to 25 miles. See sec. 5, act 1864.

Companies may unite in building on equal terms. Sec. 15, 1864; also, sec. 16th of this act.

Railroad Company. And the Hannibal and Saint Joseph railroad, the Pacific Railroad Company of Missouri, and the first-named company, or either of them, on filing their assent to this act as aforesaid, may unite upon equal terms, under this act, with the said Kansas company, in constructing said railroad and telegraph to said meridian of longitude, with the consent of the said State of Kansas; and in case said first-named company shall complete their line to the eastern boundary of California before it is completed across said state by the Central Pacific Railroad Company of California, said first-named company is hereby authorized to continue in constructing the same through California, with the consent of said state, upon the terms mentioned in this act, until said roads shall meet and connect, and the whole line of said railroad and telegraph is completed; and the Central Pacific Railroad Company of California, after completing its road across said state, is authorized to continue the construction of said railroad and telegraph through the territories of the United States to the Missouri river, including the branch roads specified in this act, upon the routes hereinbefore and hereinafter indicated, on the terms and conditions provided in this act in relation to the said Union Pacific Railroad Company, until said roads shall meet and connect, and the whole line of said railroad and branches and telegraph is completed.

Central Pacific R. R. may continue, &c., to meet other road.

Authority confirmed. See sec. 16, act of 1864, last clause. Also sec. 2, 1866.

SEC. 11. *And be it further enacted*, That for three hundred miles of said road, most mountainous and difficult of construction, to wit, one hundred and fifty miles westwardly from the eastern base of the Rocky mountains, and one hundred and fifty miles eastwardly from the the western base of the Sierra Nevada mountains, said points to be fixed by the President of the United States, the bonds to be issued to aid in the construction thereof shall be treble the number per mile hereinbefore provided, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed; and between the sections last named of one hundred and fifty miles each, the bonds to be issued to aid in the construction thereof shall be double the number per mile first mentioned, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed:

Subsidy bonds treble over the Rocky and the Sierra Nevada mountains.

Subsidy bonds double between the mountains.

Provided, That no more than fifty thousand of said bonds shall be issued under this act to aid in constructing the main line of said railroad and telegraph.

Location at state lines and 100 meridian.

SEC. 12. *And be it further enacted*, That whenever the route of said railroad shall cross the boundary of any state or territory or said meridian of longitude, the two companies meeting or uniting there shall agree upon its location at that point, with reference to the most direct and practicable through route, and in case of difference between them as to said location the President of the United States shall determine the said location; the companies named in each state and territory to locate the road across the same between the points so agreed upon, except as herein provided. The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri river to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected continuous line; and the companies herein named in Missouri, Kansas, and California, filing their assent to the provisions of this act, shall receive and transport all iron rails, chairs, spikes, ties, timber, and all materials required for constructing and furnishing said first-mentioned line between the aforesaid point on the one-hundredth meridian of longitude and western boundary of Nevada Territory, whenever the same is required by said first-named company, at cost, over that portion of the roads of said companies constructed under the provisions of this act.

Tracks to be of uniform width, &c.

To be used as continuous line, &c.

H. and St. J. road may be extended, &c.

SEC. 13. *And be it further enacted*, That the Hannibal and Saint Joseph Railroad Company of Missouri may extend its road from Saint Joseph, via Atchison, to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions in all respects, for one hundred miles in length next to the Missouri river, as are provided in this act for the construction of the railroad and telegraph line first mentioned, and may for this purpose use any railroad charter which has been or may be granted by the legislature of Kansas: *Provided*, That if actual survey shall render it desirable, the said company may construct their road, with the consent of the Kansas legislature, on the most direct and practicable route

west from St. Joseph, Missouri, so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the one-hundredth meridian of west longitude, or with the main trunk road at said point; but in no event shall lands or bonds be given to said company, as herein directed, to aid in the construction of their said road for a greater distance than one hundred miles. And the Leavenworth, Pawnee and Western Railroad Company of Kansas may construct their road from Leavenworth to unite with the road through Kansas.

Iowa road from Sioux City.

SEC. 14. *And be it further enacted*, that the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, to be fixed by the President of the United States, upon the most direct and practicable route, to be subject to his approval, so as to form a connection with the line of said company at some point on the one-hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa, upon the same terms and conditions, in all respects, as are contained in this act for the construction of the said railroad and telegraph first mentioned; and the said Union Pacific Railroad Company shall complete one hundred miles of the road and telegraph in this section provided for in two years after filing their assent to the conditions of this act, as by the terms of this act required, and at the rate of one hundred miles per year thereafter until the whole is completed: *Provided*, That a failure upon the part of said company to make said connection in the time aforesaid, and to perform the obligations imposed on said company by this section, and to operate said road in the same manner as the main line shall be operated, shall forfeit to the government of the United States all the rights, privileges, and franchises granted to and conferred upon said company by this act. And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific railroad, said point of junction to be fixed by the President of the United States, not further west than the one-hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this

U. P. R. R. Co. required to construct Sioux City road. See sect 16, act of 1864.

act for the construction of the Union Pacific railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned.

SEC. 15. *And be it further enacted*, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act, it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto.

Word companies explained.

SEC. 16. *And be it further enacted*, That at any time after the passage of this act all of the railroad companies named herein, and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company; notice of such consolidation, in writing, shall be filed in the Department of the Interior, and such consolidated company shall thereafter proceed to construct said railroad and branches and telegraph line upon the terms and conditions provided in this act.

Companies authorized to consolidate. See sec. 16, act of 1864; also see sec. 10 of this act.

SEC. 17. *And be it further enacted*, That in case said company or companies shall fail to comply with the terms and conditions of this act, by not completing said road and telegraph and branches within a reasonable time, or by not keeping the same in repair and use, but shall permit the same for an unreasonable time to remain unfinished or out of repair and unfit for use, Congress may pass any act to insure the speedy completion of said road and branches, or to put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States to repay all such expenditures caused by the default or neglect of such company or companies: *Provided*, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri river to the navigable waters of the Sacramento river in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned, and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling-stock, machine shops, lands, tene-

Congress may compel speedy completion of road.

Main line to be finished in 1876. See secs. 5 and 7, act of 1864.

ments, hereditaments, and property of every kind and character, shall be forfeited to and taken possession of by the United States: *Provided*, That of the bonds of the United States in this act provided to be delivered for any and all parts of the roads to be constructed east of the one-hundredth meridian of west longitude from Greenwich, and for any part of the road west of the west foot of the Sierra Nevada mountains, there shall be reserved of each part and installment twenty-five per centum, to be and remain in the United States treasury, undelivered, until said road and all parts thereof provided for in this act are entirely completed; and of all the bonds provided to be delivered for the said road, between the two points aforesaid, there shall be reserved out of each installment fifteen per centum, to be and remain in the treasury until the whole of the road provided for in this act is fully completed; and if the said road or any part thereof shall fail of completion at the time limited therefor in this act, then and in that case the said part of said bonds so reserved shall be forfeited to the United States.

Repealed. See sec. 7, act 1864.

Under certain circumstances Congress may reduce rates of fare.

SEC. 18. *And be it further enacted*, That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures—including repairs and the furnishing, running, and managing of said road—shall exceed ten per centum upon its cost, (exclusive of the five per centum to be paid to the United States,) Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law. And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time—having due regard for the rights of said companies named herein—add to, alter, amend, or repeal this act.

SEC. 19. *And be it further enacted*, That the several railroad companies herein named are authorized to enter into an arrangement with the Pacific Telegraph Company, the Overland Telegraph Company, and the California State Telegraph Company, so that the present line of telegraph between the Missouri river and San Francisco may be moved upon or along the line of said railroad and branches as fast as said roads and branches are

built; and if said arrangement be entered into, and the transfer of said telegraph line be made in accordance therewith to the line of said railroad and branches, such transfer shall, for all purposes of this act, be held and considered a fulfillment, on the part of said railroad companies, of the provisions of this act in regard to the construction of said line of telegraph. And in case of disagreement, said telegraph companies are authorized to remove their line of telegraph along and upon the line of railroad herein contemplated without prejudice to the rights of said railroad companies named herein.

SEC. 20. *And be it further enacted*, That the corporation hereby created and the roads connected therewith, under the provisions of this act, shall make to the Secretary of the Treasury an annual report, wherein shall be set forth:

Companies to make an annual report.

First. The names of the stockholders and their places of residence, so far as the same can be ascertained.

Second. The names and residences of the directors and all other officers of the company.

Third. The amount of stock subscribed, and the amount thereof actually paid in.

Fourth. A description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such surveys.

Fifth. The amount received from passengers on the road.

Sixth. The amount received for freight thereon.

Seventh. A statement of the expense of said road and its fixtures.

Eighth. A statement of the indebtedness of said company, setting forth the various kinds thereof; which report shall be sworn to by the president of the said company, and shall be presented to the Secretary of the Treasury on or before the first day of July in each year.

Approved July 1, 1862.

ACT JULY 12, 1862.

[12 Statutes at Large, 538.]

AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July 1, 1862.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

First meeting of commissioners on Pacific railroad and telegraph to be held in Chicago

That the first meeting of the commissioners named in the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July second, eighteen hundred and sixty-two, and of the five commissioners directed by said act to be appointed by the Secretary of the Interior, shall be held at Bryan Hall, in the city of Chicago, in the State of Illinois, on the first Tuesday of September next, at twelve o'clock, at noon. A notice of said meeting, to be signed by at least ten of the commissioners named in said act, shall be published at least once a week during the six successive weeks commencing on the twentieth of July, one thousand eight hundred and sixty-two, in one daily newspaper in each of the cities of Boston, New York, Philadelphia, Cincinnati, Chicago, and St. Louis, and no other notice of said meeting shall be requisite.

Notice.

Approved July 12, 1862.

ACT OF MARCH 3, 1863—FIXING GAUGE.

[12 Statutes at Large, 807.]

AN ACT to establish the gauge of the Pacific railroad and its branches.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the gauge of the Pacific railroad and its branches throughout their whole extent, from the Pacific coast to the Missouri river, shall be, and hereby is, established at four feet eight and one-half inches.

Approved March 3, 1863.

ACT OF JULY 2, 1864.

[13 Statutes at Large, 356.]

AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Stock shall be in shares of $100 each instead of $1,000.

No. of shares one million instead of 100,000.

Director must hold 50 shares.

Restriction as to amount held by one person repealed.

That the capital stock of the company entitled the Union Pacific Railroad Company, authorized by the act of which this act is amendatory, shall be in shares of one hundred dollars, instead of one thousand dollars, each; that the number of shares shall be one million, instead of one hundred thousand; and that the number of shares which any person shall hold to entitle him to serve as a director in said company (except the five directors to be appointed by government) shall be fifty shares, instead of five shares; and that every subscriber to said capital stock for each share of one thousand dollars, heretofore subscribed, shall be entitled to a certificate for ten shares of one hundred dollars each; and that the following words in section first of said act, "which shall be subscribed for and held in not more than two hundred shares by any one person," be and the same are hereby repealed.

How books for stock subscription are to be opened.

Manner of subscribing.

Assessments on capital stock. How paid.

Capital stock limited to actual cost of road

Transfer of stock.

SEC. 2. *And be it further enacted*, That the Union Pacific Railroad Company shall cause books to be kept open to receive subscriptions to the capital stock of said company, (until the entire capital of one hundred millions of dollars shall be subscribed,) at the general office of said company in the city of New York, and in each of the cities of Boston, Philadelphia, Baltimore, Chicago, Cincinnati, and St. Louis, at such places as may be designated by the President of the United States, and in such other localities as may be directed by him. No subscription for said stock shall be deemed valid unless the subscriber therefor shall, at the time of subscribing, pay or remit to the treasurer of the company an amount per share subscribed by him equal to the amount per share previously paid by the then-existing stockholders. The said company shall make assessments upon its stockholders of not less than five dollars per share, and at intervals of not exceeding six months from and after the passage of this act, until the par value of all shares subscribed shall be fully paid; and money only shall be receivable for any such assessments, or as equivalents for any portion of the capital stock hereinbefore authorized. The capital stock of said company shall not be increased beyond the actual cost of said road. And the stock of the company shall be deemed personal property, and shall be transferable on the books of the company, at the general office of said company in the city of New York, or at such other transfer office as the company may establish.

SEC. 3. *And be it further enacted*, That the Union Pacific Railroad Company, and all other companies provided for in this act and the act to which this is an

Regulates the taking of private property for right of way.

amendment, be, and hereby are, empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width one hundred feet on each side of its centre line, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station house [s], or any other structures required in the construction and operating of said road. And each of said companies shall have the right to cut and remove trees and other materials that might by falling encumber its road-bed, though standing or being more than one hundred feet therefrom. And in case the owner or claimant of such lands or premises and such company cannot agree as to the damages, the amount shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by any party to any judge of a court of record in any of the territories in which the lands or premises to be taken lie; and said commissioners, in their assessments of damages, shall appraise such premises at what would have been the value thereof if the road had not been built; and upon return into court of such appraisement, and upon the payment to the clerk thereof of the amount so awarded by the commissioners for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved by said assessment may, within thirty days, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary in the construction of its road. And said party appealing shall give bonds, with sufficient surety or sureties, for the payment of any cost that may arise upon such appeal. And in case the party appealing does not obtain a more favorable verdict, such party shall pay the whole cost incurred by the appellee as well as its own. And the payment into court for the use of the owner or claimant of a sum equal to that finally awarded shall be held to vest in said company the title of said land, and the right to use and occupy the same for the construction, maintaining, and operating of the road of said company. And in case any of the lands to be taken as aforesaid shall be held by any person residing without the territory or subject

Proceedings to obtain title to right of way, &c.

to any legal disability, the court may appoint a proper person, who shall give bonds, with sufficient surety or sureties, for the faithful execution of his trust, and who may represent in court the person disqualified or absent as aforesaid, when the same proceeding shall be had in reference to the appraisement of the premises to be taken and with the same effect as have been already described. And the title of the company to the land taken by virtue of this act shall not be affected nor impaired by reason of any failure by any guardian to discharge faithfully his trust, And in case it shall be necessary for either of the said companies to enter upon lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purpose of its said railroad, and may institute proceedings in manner described for the purpose of ascertaining the value of and acquiring a title to the same; and the court may determine the kind of notice to be served on such owner or owners, and may in its discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claim to damages against said company shall be barred. It shall be competent for the legal guardian of any infant or any other person under guardianship to agree with the proper company as *to* damages sustained by reason of the taking of any lands of any such person under disability, as aforesaid, for the use as aforesaid; and upon such agreement being made, and approved by the court having supervision of the official acts of said guardian, the said guardian shall have full power to make and execute a conveyance thereof to the said company, which shall vest the title thereto in the said company.

Increases the land grant to 10 alternate sections on each side of road, and the limit to 20 miles on each side of the road.

SEC. 4. *And be it further enacted*, That section three of said act be hereby amended by striking out the word "five," where the same occurs in said section, and by inserting in lieu thereof the word "ten;" and by striking out the word "ten," where the same occurs in said section, and inserting in lieu thereof the word "twenty." And section seven of said act is hereby amended by striking out the word "fifteen," where the same occurs in said section, and inserting in lieu thereof the word "twenty-five." And the term "mineral lands," wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act,

Secretary of the Interior to withdraw lands within 25 miles of route.

Defines mineral lands.

Land grant subject to pre-emption law, but only to the extent of 160 acres to each settler.

or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp-land, or other lawful claim, nor include any government reservation or mineral lands, or the improvements of any *bona fide* settler on any lands returned and denominated as mineral lands, and the timber necessary to support his said improvements as a miner or agriculturalist, to be ascertained under such rules as have been or may be established by the Commissioner of the General Land Office, in conformity with the provisions of the pre-emption laws: *Provided*, That the quantity thus exempted by the operation of this act, and the act to which this is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agriculturalist; and such quantity for each settler who claims as a miner, as the said commissioner may establish by general regulations: *Provided, also*, That the phrase "but where the same shall contain timber, the timber thereon is hereby granted to said company," in the proviso to said section three, shall not apply to the timber growing or being on any land farther than ten miles from the centre of the line of any one of said roads or branches mentioned in said act or in this act. And all lands shall be excluded from the operation of this act, and of the act to which this is an amendment, which were located or selected to be located under the provisions of an act entitled "An act donating lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two, and notice thereof given at the proper land office.

Proviso as to timber.

Subject also to lands located under act for benefit of colleges, agriculture, and the arts.

Time extended one year for designating route, filing map, and completing road.

SEC. 5. *And be it further enacted*, That the time for designating the general route of said railroad, and of filing the map of the same, and the time for the completion of that part of the railroads required by the terms of said act of each company, be and the same is hereby extended one year from the time in said act designated; and that the Central Pacific Railroad Company of California shall be required to complete twenty-five miles of their said road in each year thereafter, and the whole to the state line within four years, and that only one-half of the compensation for services rendered for the government by said companies shall be required to be applied to the payment of the bonds issued by the government in aid of the construction of said road.

California road to complete only 25 miles each year.

Only one-half of government business to be applied to the payment of bonds.

President may appoint commissioners at any time.

SEC. 6. *And be it further enacted*, That the proviso to section four of said act is hereby modified as follows, viz: And the President of the United States is hereby

authorized, at any time after the passage of this act, to appoint for each and every of said roads three commissioners, as provided for in the act to which this act is amendatory; and the verified statement of the president of the California company, required by said section four, shall be filed in the office of the United States surveyor-general for the State of California, instead of being presented to the President of the United States; and the said surveyor-general shall thereupon notify the said commissioners of the filing of such statement, and the said commissioners shall thereupon proceed to examine the portion of said railroad and telegraph line so completed, and make their report thereon to the President of the United States, as provided by the act of which this is amendatory. And such statement may be filed and such railroad and telegraph line be examined and reported on by the said commissioners, and the requisite amount of bonds may be issued, and the lands appertaining thereto may be set apart, located, entered, and patented, as provided in this act and the act to which this is amendatory, upon the construction by said railroad company of California of any portion of not less than twenty consecutive miles of their said railroad and telegraph line, upon the certificate of said commissioners that such portion is completed as required by the act to which this is amendatory. And section ten of the act of which this is amendatory is hereby amended by inserting after the words "United States," in the last clause, the words "and states intervening."

Commissioners may inspect road of California Co. under certain provisions.

SEC. 7. *And be it further enacted*, That so much of section seventeen of said act as provides for a reservation by the government of a portion of the bonds to be issued to aid in the construction of the said railroads is hereby repealed. And the failure of any one company to comply fully with the conditions and requirements of this act, or the act to which this is amendatory, shall not work a forfeiture of the rights, privileges, or franchise of any other company or companies that shall have complied with the same.

Repeal of reservation of government bonds.

The default or neglect of one company not to affect any other.

SEC. 8. *And be it further enacted*, That for the purpose of facilitating the work on said railroad, and of enabling the said company as early as practicable to commence the grading of said railroad in the region of the mountains, between the eastern base of the Rocky mountains and the western base of the Sierra Nevada mountains, so that the same may be finally completed within the time required by law, it is hereby provided that whenever the chief engineer of the said company and said

commissioners shall certify that a certain proportion of the work required to prepare the road for the superstructure on any such section of twenty miles is done, (which said certificate shall be duly verified,) the Secretary of the Treasury is hereby authorized and required, upon the delivery of such certificate, to issue to said company a proportion of said bonds, not exceeding two-thirds of the amount of bonds authorized to be issued under the provisions of the act, to aid in the construction of such section of twenty miles, nor in any case exceeding two-thirds of the value of the work done, the remaining one-third to remain until the said section is fully completed and certified by the commissioners appointed by the President, according to the terms and provisions of the said act; and no such bonds shall issue to the Union Pacific Railroad Company for work done west of Salt Lake City under this section, more than three hundred miles in advance of the completed continuous line of said railroad from the point beginning on the one-hundredth meridian of longitude.

Provision for Union Pacific Railroad obtaining a proportion of government bonds in the mountain work before final completion of the road.

But not west of Salt Lake City more than 300 miles in advance of its completed line.

SEC. 9. *And be it further enacted*, That to enable any one of said corporations to make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri river and other rivers which its road may pass in its course; and authority is hereby given said corporation to construct bridges over said Missouri river and all other rivers for the convenience of said road: *Provided*, That any bridge or bridges it may construct over the Missouri river, or any other navigable river on the line of said road, shall be constructed with suitable and proper draws for the passage of steamboats, and shall be built, kept, and maintained at the expense of said company, in such manner as not to impair the usefulness of said rivers for navigation to any greater extent than such structures of the most approved character necessarily do: *And provided, further*, That any company authorized by this act to construct its road and telegraph line from the Missouri river to the initial point aforesaid, may construct its road and telegraph line so as to connect with the Union Pacific railroad at any point westwardly of such initial point, in case such company shall deem such westward connection more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road, such company shall be entitled to all the benefits and be subject to all the conditions and re-

Right for ferries and bridges.

Companies may unite with main line west of 100th meridian, but to receive no more lands or bonds than if the junction was on the 100th meridian.

strictions of this act: *Provided, further, however,* That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided, if the same had united with the Union Pacific railroad on the one-hundredth degree of longitude; nor shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided.

SEC. 10. *And be it further enacted,* That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act, and the act to which this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest, with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property, and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies, and public stores for the government of the United States. And said section is further amended by striking out the word "forty," and inserting in lieu thereof the words "on each and every section of not less than twenty."

Act of March 3, 1865. Bonds 100 miles in advance.

Authorizes the issue of first mortgage bonds, which shall be a lien on the road prior to the lien of the government.

Changes the sections from "40" to "20" miles.

SEC. 11. *And be it further enacted,* That if any of the railroad companies entitled to bonds of the United States, or to issue their first mortgage bonds herein provided for, has, at the time of the approval of this act, issued or shall thereafter issue any of its own bonds or securities in such form and manner as in law or equity to entitle the same to priority or preference of payment to the said guaranteed bonds, or said first mortgage bonds, the amount of such corporate bonds outstanding and unsatisfied or uncancelled shall be deducted from the amount of such government and first mortgage bonds which the company may be entitled to receive and issue; and such an amount only of such government bonds and such first mortgage bonds shall be granted or permitted as, added to such outstanding, unsatisfied, or uncancelled bonds of

Outstanding bonds already issued by any road shall be deducted from the amount of the bonds to be issued by the government.

the company, shall make up the whole amount per mile to which the company would otherwise have been entitled: *And provided further*, That before any bonds shall be so given by the United States, the company claiming them shall present to the Secretary of the Treasury an affidavit of the president and secretary of the company, to be sworn to before the judge of a court of record, setting forth whether said company has issued any such bonds or securities, and, if so, particularly describing the same, and such other evidence as the Secretary may require, so as to enable him to make the deduction herein required; and such affidavit shall then be filed and deposited in the office of the Secretary of the Interior. And any person swearing falsely to any such affidavit shall be deemed guilty of perjury, and on conviction thereof shall be punished as aforesaid: *Provided, also*, That no land granted by this act shall be conveyed to any party or parties, and no bonds shall be issued to any company or companies, party or parties, on account of any road or part thereof made prior to the passage of the act to which this act is an amendment, or made subsequent thereto under the provisions of any act or acts other than this act and the act amended by this act.

Sworn statement of all outstanding securities shall be made to the Secretary of the Treasury.

Law shall not be construed to apply to any other roads than those specified in the act.

SEC. 12. *And be it further enacted*, That the Leavenworth, Pawnee and Western Railroad Company, now known as the Union Pacific Railroad Company, Eastern Division, shall build the railroad from the mouth of Kansas river, by the way of Leavenworth, or, if that be not deemed the best route, then the said company shall, within two years, build a railroad from the city of Leavenworth to unite with the main stem at or near the city of Lawrence; but to aid in the construction of said branch the said company shall not be entitled to any bonds. And if the Union Pacific Railroad Company shall not be proceeding in good faith to build the said railroad through the territories when the Leavenworth, Pawnee and Western Railroad Company, now known as the Union Pacific Railroad Company, Eastern Division, shall have completed their road to the hundredth degree of longitude, then the last-named company may proceed to make said road westward until it meets and connects with the Central Pacific Railroad Company on the same line. And the said railroad from the mouth of the Kansas river to the one-hundredth meridian of longitude shall be made by the way of Lawrence and Topeka, or on the bank of the Kansas river opposite said towns: *Provided*, That no bonds shall be issued or land certified by the United States to any person or company,

The Union Pacific R.R. Co., Eastern Div., shall build branch from Leavenworth to Lawrence in 2 years.

In default of the main line being built, the Kansas Co. may proceed to build the same.

Kansas road shall be built via Lawrence and Topeka.

for the construction of any part of the main trunk line of said railroad west of the one-hundredth meridian of longitude and east of the Rocky mountains, until said road shall be completed from or near Omaha, on the Missouri river, to the said one-hundredth meridian of longitude.

The line from Omaha must be built before bonds or lands shall be granted west of 100th meridian and east of Rocky mountains.

Sec. 13. *And be it further enacted*, That at and after the next election of directors, the number of directors to be elected by the stockholders shall be fifteen; and the number of directors to be appointed by the President shall be five; and the President shall appoint three additional directors to serve until the next regular election, and thereafter five directors. At least one of said government directors shall be placed on each of the standing committees of said company, and at least one on every special committee that may be appointed. The government directors shall, from time to time, report to the Secretary of the Interior, in answer to any inquiries he may make of them, touching the condition, management, and progress of the work, and shall communicate to the Secretary of the Interior, at any time, such information as should be in the possession of the Deparment. They shall, as often as may be necessary to a full knowledge of the condition and management of the line, visit all portions of the line of road, whether built or surveyed; and while absent from home, attending to their duties as directors, shall be paid their actual travelling expenses, and be allowed and paid such reasonable compensation for their time actually employed as the board of directors may decide.

At next election, 15 directors to be elected, and 5 government directors.

One government director on each committee.

Duties of government directors, and their compensation.

Sec. 14. *And be it further enacted*, That the next election for directors of said railroad shall be held on the first Wednesday of October next, at the office of said company in the city of New York, between the hours of ten o'clock a. m. and four o'clock p. m. of said day; and all subsequent regular elections shall be held annually thereafter at the same place; and the directors shall hold their offices for one year, and until their successors are qualified.

Next election of directors in October, 1864, and annually thereafter; and directors shall hold office for one year.

Sec. 15. *And be it further enacted*, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line; and in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of

The several roads shall be run as a continuous line, and on equal terms to all.

the road or business of any or either of said companies, or adverse to the road or business of any or either of the others; and it shall not be lawful for the proprietors of any line of telegraph authorized by this act, or the act amended by this act, to refuse or fail to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured, for each offence, the sum of one hundred dollars, and such other damages as he may have suffered on account of said refusal or failure, to be sued for and recovered in any court of the United States, or of any state or territory of competent jurisdiction.

See additions Act June 20, 1874.

SEC. 16. *And be it further enacted*, That any two or more of the companies authorized to participate in the benefits of this act are hereby authorized at any time to unite and consolidate their organizations, as the same may or shall be, upon such terms and conditions, and in such manner as they may agree upon, and as shall not be incompatible with this act, or the laws of the state or states in which the roads of such companies may be, and to assume and adopt such corporate name and style as they may agree upon, with a capital stock not to exceed the actual cost of the roads so to be consolidated, and shall file a copy of such consolidation in the Department of the Interior, and thereupon such organization so formed and consolidated shall succeed to, possess and be entitled to receive from the government of the United States all and singular the grants, benefits and immunities, guarantees, acts, and things to be done and performed, and be subject to the same terms, conditions, restrictions, and requirements which said companies respectively at the time of such consolidation are or may be entitled or subject to under this act in place and substitution of said companies so consolidated respectively. And all other provisions of this act, so far as applicable, relating or in any manner appertaining to the companies so consolidated, or either thereof, shall apply and be of force as to such consolidated organization. And in case, upon the completion by such consolidated organization of the roads or either of them of the companies so consolidated, any other of the road or roads of either of the other companies authorized as aforesaid (and forming, or intended, or necessary to form a portion of a continuous line from each of the several points on the Missouri river hereinbefore designated to the Pacific coast) shall not have constructed the number of miles of its said road within the time herein required, such consolidated organization is hereby authorized to continue

Companies may consolidate, and consolidated company succeeds to rights of all the companies.

the construction of its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point unite and connect therewith; and for and in aid thereof the said consolidated organization may do and perform, in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular the several acts and things hereinbefore provided, authorized, or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guarantees, acts, and things to be done and performed by the government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners, in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions, so far as the same are applicable thereto. And said consolidated company shall pay to said defaulting company the value, to be estimated by competent engineers, of all the work done and material furnished by said defaulting company, which may be adopted and used by said consolidated company in the progress of the work under the provisions of this section: *Provided, nevertheless*, That said defaulting company may at any time, before receiving pay for its said work and material, as hereinbefore provided, on its own election, pay said consolidated company the value of the work done and material furnished by said consolidated company, to be estimated by competent engineers, necessary for and used in the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits, and privileges which shall be acquired, possessed, or exercised, pursuant to this section, shall be to that extent an abatement of the rights, benefits, and privileges hereinbefore granted to such other company. And in case any company authorized thereto shall not enter into such consolidated organization, such company, upon the completion of its road, as hereinbefore provided, shall be entitled to and is hereby authorized to continue and extend the same, under the circumstances, and in accordance with the provisions of this section, and to have all the benefits thereof, as fully and com-

Provision in case any company is in default in substantial compliance with the provisions of the act.

Proviso.

pletely as are herein provided touching such consolidated organization. And in case more than one such consolidated organization shall be made pursuant to this act, the terms and conditions of this act, hereinbefore recited as to one, shall apply in like manner, force, and effect to the other: *Provided, however*, That rights and interests at any time acquired by one such consolidated organization shall not be impaired by another thereof. It is further provided, that, should the Central Pacific Railroad Company of California complete their line to the eastern line of the State of California before the line of the Union Pacific Railroad Company shall have been extended westward so as to meet the line of said first-named company, said first-named company may extend their line of road eastward one hundred and fifty miles on the established route, so as to meet and connect with the line of the Union Pacific Railroad, complying in all respects with the provisions and restrictions of this act as to said Union Pacific road, and upon doing so shall enjoy all the rights, privileges, and benefits conferred by this act on said Union Pacific Railroad Company.

Central Pac. RR. of Cal. after their road is completed, may build 150 miles eastwardly if Union Pacific shall not then have completed their line.

SEC. 17. *And be it further enacted*, That so much of section fourteen of said act as relates to a branch from Sioux City be, and the same is hereby, amended to read as follows: That whenever a line of railroad shall be completed through the States of Iowa or Minnesota to Sioux City, such company now organized or as may hereafter be organized under the laws of Iowa, Minnesota, Dacota, or Nebraska, as the President of the United States, by its request, may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route, to such a point on, and so as to connect with, the Iowa branch of the Union Pacific railroad from Omaha, or the Union Pacific railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act to which this is an amendment, for the construction of the said Union and Pacific railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year: *Provided*, That said Union Pacific Railroad Company shall be, and is hereby, released from the construction of said branch. And said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but

Iowa and Minnesota companies may build the Sioux City branch.

Union Pacific released from the construction of this branch.

said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch: *And provided further*, That if a railroad be not completed to Sioux City, across Iowa or Minnesota, within eighteen months from the date of this act, then said company, designated by the President as aforesaid, may commence, continue, and complete the construction of said branch, as contemplated by the provisions of this act: *Provided, however*, That if the said company so designated by the President as aforesaid, shall not complete the said branch from Sioux City to the Pacific railroad within ten years from the passage of this act, then, and in that case, all of the railroad which shall have been constructed by said company shall be forfeited to and become the property of the United States.

Provision in case of default of the Iowa and Minnesota companies.

SEC. 18. *And be it further enacted*, That the Burlington and Missouri River Railroad Company, a corporation organized under and by virtue of the laws of the State of Iowa, be and hereby is authorized to extend *is* [its] road through the Territory of Nebraska from the point where it strikes the Missouri river, south of the mouth of the Platte river, to some point not further west than the one-hundredth meridian of west longitude, so as to connect, by the most practicable route, with the main trunk of the Union Pacific railroad, or that part of it which runs from Omaha to the said one-hundredth meridian of west longitude. And, for the purpose of enabling said Burlington and Missouri River Railroad Company to construct that portion of their road herein authorized, the right-of-way through the public lands is hereby granted to said company for the construction of said road. And the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof. Said right-of-way is granted to said company to the extent of two hundred feet where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations. And the United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this section and required for the said right-of-way and grant of land herein made.

Authorizes the Burlington and Missouri River R. R. Co. to extend its line and connect with main line.

SEC. 19. *And be it further enacted*, That for the purpose of aiding in the construction of said road, there be

Grant of lands made to Burlington and Mo. River RR. Co.

and hereby is granted to the said Burlington and Missouri River Railroad Company, every alternate section of public land (excepting mineral lands as provided in this act) designated by odd numbers, to the amount of ten alternate sections per mile on each side of said road, on the line thereof and not sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed: *Provided*,

Comp'y must accept within 1 year.

[That] said company shall accept this grant within one year from the passage of this act, by filing such acceptance with the Secretary of the Interior; and shall also establish the line of said road, and file a map thereof with the Secretary of the Interior within one year of the date of said acceptance, when the said Secretary shall withdraw the lands embraced in this grant from market.

SEC. 20. *And be it further enacted*, That whenever said Burlington and Missouri River Railroad Company shall have completed twenty consecutive miles of the road mentioned in the foregoing section, in the manner provided for other roads mentioned in this act, and the act to which this is an amendment, the President of the United States shall appoint three commissioners to examine and report to him in relation thereto; and if it shall appear to him that twenty miles of said road have been completed as required by this act, then, upon certificate of said commissioner[s] to that effect, patents shall issue conveying the right and title to said lands to said company on each side of said road, as far as the same is completed, to the amount aforesaid; and such examination, report, and conveyance, by patents, shall continue from time to time, in like manner, until said road shall have been completed. And the President shall appoint said commissioners, [and] fill vacancies in said commission, as provided in relation to other roads mentioned in the act to which this is an amendment. And the said company shall be entitled to all the privileges and immunities granted to the Hannibal and St. Joseph Railroad Company by the said last-mentioned act, so far as the same may be applicable: *Provided*, That no government bonds shall be issued to the said Burlington and Missouri River Railroad Company to aid in the construction of said extension of its road: *And provided further*, That said extension shall be completed within the period of ten years from the passage of this act.

Provision as to how lands shall issue to Burlington and Mo. River RR. Co.

No governm't bonds shall issue to this company.

Ten years to build the road.

SEC. 21. *And be it further enacted*, That before any land granted by this act shall be conveyed to any company or party entitled thereto under this act, there shall

first be paid into the treasury of the United States the cost of surveying, selecting and conveying the same by the said company or party in interest as the titles shall be required by said company, which amount shall, without any further appropriation, stand to the credit of the proper account, to be used by the Commissioner of the General Land Office, for the prosecution of the survey of the public lands along the line of said roads, and so from year to year, until the whole shall be completed, as provided under the provisions of this act.

Expense of survey of land to be paid by each company.

SEC. 22. *And be it further enacted*, That Congress may at any time alter, amend, or repeal this act.

Approved July 2, 1864.

ACT OF MARCH 3, 1865.

[13 Statutes at Large, 504.]

AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July 1st, eighteen hundred and sixty-two, and to amend an act amendatory thereof, approved July second, eighteen hundred and sixty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section ten of said act of July second, eighteen hundred and sixty-four, be so modified and amended as to allow the Central Pacific Railroad Company and the Western Pacific Railroad Company, of California, *the Union Pacific Railroad Company, the Union Pacific Railroad Company, Eastern Division, and all other companies provided for in the said act of the second July, eighteen hundred and sixty-four*, to issue their six per centum thirty years' bonds, interest payable in any lawful money of the United States, upon their separate roads. And the said companies are hereby authorized to issue, respectively, their bonds to the extent of one hundred miles in advance of a continuous completed line of construction.

Sec. 10 amended, so as to allow the Cen. Pac. R. R. Co. and the Wes. Pac. RR. Co., of California, the Union Pac. RR. Co., the Union Pac. RR. Co., Eastern Division, &c., to issue bonds.

SEC. 2. *And be it further enacted*, That the assignment made by the Central Pacific Railroad Company of California to the Western Pacific Railroad Company of said state, of the right to construct all that portion of said railroad and telegraph from the city of San José to the city of Sacramento is hereby ratified and confirmed to the said Western Pacific Railroad Company, with all the

Assignment to Western Pac. R. R. Co. of California ratified.

privileges and benefits of the several acts of Congress relating thereto, and subject to all the conditions thereof:

Proviso. *Provided*, That the time within which the said Western Pacific Railroad Company shall be required to construct the first twenty miles of their said road, shall be one year from the first day of July, eighteen hundred and sixty-five, and that the entire road shall be completed from San José to Sacramento, connecting at the latter point with the said Central Pacific railroad within four years thereafter.

Approved March 3, 1865.

ACT OF JUNE 15, 1866.

[14 Statutes at Large, 66.]

AN ACT to facilitate commercial, postal, and military communication among the several states.

WHEREAS, The Constitution of the United States confers upon Congress, in express terms, the power to regulate commerce among the several states, to establish post-roads, and to raise and support armies: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any railroad company in the United States, whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, government supplies, mails, freight, and property, on their way from any state to another state, and to receive compensation therefor, and to connect with roads of other states so as to form continuous lines for the transportation of the same to the place of destination: *Provided*, That this act shall not affect any stipulation between the government of the United States and any railroad company for transportation or fares without compensation, nor impair or change the conditions imposed by the terms of any act granting lands to any such company to aid in the construction of its road, nor shall it be construed to authorize any railroad company to build any new road or connection with any other road without authority from the state in which said railroad or connection may be proposed.

SEC. 2. *And be it further enacted*, That Congress may at any time alter, amend, or repeal this act.

Approved June 15, 1866.

[Inserted because of its application to inter-state commerce, and not on account of any special reference to Kansas Pacific railway.]

JOINT RESOLUTION OF MAY 7, 1866.

[14 Statutes at Large, 355.]

A RESOLUTION extending the time for the completion of the Union Pacific railway, eastern division.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the time for the completion of the first one hundred miles of railroad and telegraph line by the Leavenworth, Pawnee and Western Railroad Company, (since called the "Union Pacific Railroad Company, Eastern Division,") mentioned in the tenth section of the charter of the Union Pacific Railroad Company, of July first, one thousand eight hundred and sixty-two, and in the fifth section of the amendment thereof, of July second, one thousand eight hundred and sixty-four, be, and the same is hereby, extended until the twenty-seventh day of June, one thousand eight hundred and sixty-six; and that the time for completing each succeeding section of one hundred miles shall be reckoned from the said twenty-seventh day of June in said year.

SEC. 2. *And be it further resolved*, That the time for commencing and completing the Northern Pacific railroad, and all its several sections, is extended for the term of two years.

Approved May 7, 1866.

ACT OF JULY 3, 1866.

[14 Statutes at Large, 79.]

AN ACT to amend an act entitled "An act to amend 'An act entititled an act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July 1, 1862," approved July 2, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That that the Union Pacific Railway Company, Eastern Division, is hereby authorized to designate the general route of their said road, and to file a map thereof, as now required by law, at any time before the first day of December, eighteen hundred and sixty-six; and upon the filing of the said map, showing the general route of

Union Pacific Railway Co. to designate general route of road, &c., before Dec. 1, '66.

Lands on line of road to be reserved from sale.

said road, the lands along the entire line thereof, so far as the same may be designated, shall be reserved from sale by order of the Secretary of the Interior: *Provided*,

Am't of bonds to be the same as if, &c.

That said company shall be entitled to only the same amount of the bonds of the United States to aid in the construction of their line of railroad and telegraph as they would have been entitled to if they had connected their said line with the Union Pacific railroad on the one-hundreth degree of longitude as now required by law: *And provided further*, That said company shall connect

Point of connect'n with the Union Pac. RR.

their line of railroad and telegraph with the Union Pacific railroad, but not at a point more than fifty miles westwardly from the meridian of Denver, in Colorado.

SEC. 2. *And be it further enacted*, That the Union Pacific Railroad Company, with the consent and approval of the Secretary of the Interior, are hereby authorized to

Location of Union Pac. RR. Co. from Omaha westward.

locate, construct, and continue their road from Omaha, in Nebraska Territory, westward, according to the best and most practicable route, and without reference to the initial point on the one-hundredth meridian of west longitude, as now provided by law, in a continuous completed line, until they shall meet and connect with the Central Pacific Railroad Company of California; and the Cen-

Of Central Pacific RR. Company westward.

tral Pacific Railroad Company of California, with the consent and approval of the Secretary of the Interior, are hereby authorized to locate, construct, and continue their road eastward, in a continuous completed line, until they shall meet and connect with the Union Pacific railroad: *Provided*, That each of the above-named compa-

Work may be done on not over 300 miles in advance of continuous completed lines

nies shall have the right, when the nature of the work to be done, by reason of deep cuts and tunnels, shall for the expeditious construction of the Pacific railroad require it, to work for an extent of not to exceed three hundred miles in advance of their continuous completed lines.

Approved July 3, 1866.

ACT OF JULY 25, 1866.

[14 Statutes at Large, 241.]

AN ACT granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon.

SECTION 7. *And be it further enacted*, That the said companies named in this act are hereby required to operate and use the portions or parts of said railroad and tele-

graph mentioned in section one of this act for all purposes of transportation, travel, and communication, so far as the government and public are concerned, as one connected and continuous line; and in such operation and use to afford and secure to each other equal advantages and facilities as to rates, time, and transportation, without any discrimination whatever, on pain of forfeiting the full amount of damages sustained on account of such discrimination, to be sued for and recovered in any court of the United States, or of any state, of competent jurisdiction.

Approved July 25, 1866.

[Introduced to show the care taken by Congress to secure fair and equal treatment of each other, by the railroads mentioned in the act.]

JOINT RESOLUTION, JULY 26, 1876.

[14 Statutes at Large, 367.]

A RESOLUTION granting the right-of-way through military reserves to the Union Pacific Railroad Company and its branches.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to approval by the President, the right-of-way, one hundred feet in width, is hereby granted to the Union Pacific Railroad Company and the companies constructing the branch roads connecting therewith, for the construction and operation of their roads over and upon all military reserves through which the same may pass; and the President is hereby authorized to set apart to the Union Pacific Railway Company, Eastern Division, twenty acres of the Fort Riley military reservation, for depot and other purposes, in the bottom opposite "Riley City;" also, fractional section "one" on the west side of said reservation, near Junction City, for the same purposes; and also to restore, from time to time, to the public domain, any portion of said military reserve over which the Union Pacific railroad, or any of its branches, may pass, and which may not be required for military purposes: *Provided*, That the President shall not permit the location of any such railroad, or the diminution of any such reserve in any manner so as to impair its usefulness for military purposes, so long as it shall be required therefor.

Approved, July 26, 1866.

ACT OF 1868.

[15 Statutes at Large, p. 39.]

March 6, 1868. AN ACT restoring lands to market along the line of the Pacific railroad and branches.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the act approved July 1st, eighteen hundred and sixty-two, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," and the acts amendatory thereof, shall be held to authorize the withdrawal or exclusion from settlement and entry, under the provisions of the pre-emption or homestead laws, the even-numbered sections along the routes of the several roads therein mentioned which have been or may be hereafter located: *Provided*, That such sections shall be rated at two dollars and fifty cents per acre, and subject only to entry under those laws; and the Secretary of the Interior be, and is hereby, authorized and directed to restore to homestead settlement, pre-emption or entry, according to existing laws, all the even-numbered sections of land belonging to the government, and now withdrawn from market, on both sides of the Pacific railroad and branches, wherever said road and branches have been definitely located.

Lands on line of Pacific railroads and branches restored to market.
1862, ch. 120, vol. xii., p. 489.
1864, ch. 216, vol. xiii., p. 356.
1866, ch. 156, vol. xiv., p. 79.
Vol. xiv., pp. 355, 367.

Price of lands.

Homestead & pre-emption rights.

Approved March 6, 1868.

ACT OF 1868.

[15 Statutes at Large, p. 79.]

June 25, 1868. AN ACT relative to filing reports of railroad companies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the reports required to be made to the Secretary of the Treasury on or before the first day of July of each year, by the corporations created by or entitled to subsidies under the provisions of an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eight-

Reports of certain railroads to be made on or before Oct. 1st, in each year, to Secretary of Interior.
1862, ch. 120, vol. xii., p. 489.
1864, ch. 216, vol. xiii., p. 356.
1865, ch. 88, vol. xiii., p. 504, to contain what.

een hundred and sixty-two, and the acts supplemental to and amendatory thereof, shall hereafter be made to the Secretary of the Interior, on or before the first day of October of each year. Said reports shall give full and specific information upon the several points mentioned in the twentieth section of the said act of eighteen hundred and sixty-two, and shall be verified as therein prescribed, and on failure to make the same as herein required, the issue of bonds or patents to the company in default shall be suspended until the requirements of this act shall be complied with by such company. And the reports hitherto made to the Secretary of the Treasury under the said act of July first, eighteen hundred and sixty-two, shall be transferred and delivered by him to the Secretary of the Interior to be filed by him.

Former reports.

SEC. 2. *And be it further enacted*, That the corporations created by the provisions of the acts of Congress approved July second, eighteen hundred and sixty-four, and July twenty-seventh, eighteen hundred and sixty-six, and known as the Northern Pacific Railroad Company, the Atlantic and Pacific Railroad Company, and the Southern Pacific Railroad Company, shall make reports to the Secretary of the Interior on or before the first day of October of each year, as are required to be made by the Union Pacific Railroad and branches, under the provisions of the first section of this act, and on failure so to do shall be subject to the like suspension.

Reports of Northern Pacific, Atlantic and Pacific, and Southern Pacific to be made when, &c.
1864, ch. 216, vol. xiii., p. 356.
1866, ch. 278, vol. xiv., p. 292.

SEC. 3. *And be it further enacted*, That the reports required from the commissioners appointed to examine and report in relation to the road of any of the corporations, whereto reference is made in this act, shall be addressed to and filed in the Department of the Interior; and all such reports, heretofore made, shall be transferred to and filed in said Department of the Interior; and so much of any and all acts as requires any reports from such companies, or any officers thereof, to be made to the Secretary of the Treasury, is hereby repealed.

Reports of commissioners to be made to Department of the Interior.

Repealing clause.

SEC. 4. *And be it further enacted*, That, in addition to the eight subjects referred to in section twenty of the act of July, eighteen hundred and sixty-two, to be reported upon, there shall also be furnished, annually, to the Secretary of the Interior, all reports of engineers, superintendents, or other officers who make annual reports to any of said railroad companies.

Reports of engineers and other officers who made reports, to be furnished.

Approved June 25, 1868.

ACT MARCH 3, 1869.

AN ACT to authorize the transfer of lands granted to the Union Pacific Railroad Company, Eastern Division, between Denver and the point of its junction with the Union Pacific railroad, to the Denver Pacific Railway and Telegraph Company, and to expedite the completion of railroads to Denver, in the Territory of Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Union Pacific Railway Company, Eastern Division, be, and it hereby is, authorized to contract with the Denver Pacific Railway and Telegraph Company, a corporation existing under the laws of the Territory of Colorado, for the construction, operation, and maintenance of that part of its line of railroad and telegraph between Denver City and its point of connection with the Union Pacific railroad, which point shall be at Cheyenne, and to adopt the road-bed already graded by the said Denver Pacific Railway and Telegraph Company as said line, and to grant to said Denver Pacific Railway and Telegraph Company the perpetual use of its right-of-way and depot-grounds, and to transfer to it all the rights and privileges, subject to all the obligations pertaining to said part of its line.

U. P. RW. Co., Eastern Division, to contract with Denver Pacific Co.

SEC. 2. *And be it further enacted,* That the said Union Pacific Railway Company, Eastern Division, shall extend its railroad and telegraph to a connection at the city of Denver, so as to form, with that part of its line herein authorized to be constructed, operated, and maintained by the Denver Pacific Railway and Telegraph Company, a continuous line of railroad and telegraph from Kansas City, by way of Denver, to Cheyenne. And all the provisions of law for the operation of the Union Pacific railroad, its branches and connections, as a continuous line, without discrimination, shall apply the same as if the road from Denver to Cheyenne had been constructed by the said Union Pacific Railway Company, Eastern Division; but nothing herein shall authorize the said Eastern Division Company to operate the road or fix the rates of tariff for the Denver Pacific Railway and Telegraph Company.

Shall extend road to form continuous line from Kansas City, by Denver, to Cheyenne.

Operation of road and rates of tariff.

SEC. 3. *And be it further enacted,* That said companies are hereby authorized to mortgage their respective portions of said road, as herein defined, for an amount not exceeding thirty-two thousand dollars per mile, to enable

Companies may mortgage their roads.

them respectively to borrow money to construct the same; and that each of said companies shall receive patents to the alternate sections of land along their respective lines of road, as herein defined, in like manner and within the same limits as is provided by law in the case of lands granted to the Union Pacific Railway Company, Eastern Division: *Provided*, That neither of the companies hereinbefore mentioned shall be entitled to subsidy in United States bonds, under the provisions of this act.

Land patents.

No bond subsidy.

Approved March 3, 1869.

JOINT RESOLUTION MARCH 3, 1869.

CHANGE OF NAME.

[15 Statutes at Large, p. 348.]

JOINT RESOLUTION authorizing the Union Pacific Railway Company, Eastern Division, to change its name to the "Kansas Pacific Railway Company."

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Union Pacific Railway Company, Eastern Division, is hereby authorized by resolution of its board of directors, which shall be filed in the office of the Secretary of the Interior, to change its name to the "Kansas Pacific Railway Company."

Union Pacific Railway Co., Eastern Division, to change its name to Kansas Pacific Railway Co.

Approved March 3, 1869.

JOINT RESOLUTION OF 1869.

[16 Statutes at Large, p. 56–7.]

JOINT RESOLUTION for the protection of the interests of the United States in the Union Pacific Railroad Company, the Central Pacific Railroad Company, and for other purposes.

April 10, 1869.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the stockholders of the Union Pacific Railroad Company, at a meeting to be held on the twenty-second day of April, eighteen hundred and sixty-nine, at the city of Boston, (with power to adjourn from day to day,) shall elect a board of directors for the ensuing year; and said stockholders are hereby authorized to establish their general office at such place in the United States as they may se-

Stockholders of Union Pac. RR. Co. to elect a board of directors.

To establish their general office.

lect at said meeting: *Provided*, That the passage of this resolution shall not confer any other right upon said Union Pacific Railroad Company than to hold such election, or to be held in any manner to relinquish or waive any rights of the United States to take advantage of any act or neglect of said Union Pacific Railroad Company heretofore done or omitted, whereby the rights of the general government have been or may be prejudiced: *And provided further*, That the common terminus of the Union Pacific and the Central Pacific railroads shall be at or near Ogden; and the Union Pacific Railroad Company shall build, and the Central Pacific Railroad Company pay for and own the railroad from the terminus aforesaid to Promontory Summit, at which point the rails shall meet and connect and form one continuous line.

No other right conferred or waived hereby.

Common terminus of the Union Pac. and Central Pacific railroads to be at or near Ogden, &c.

SEC. 2. *And be it further resolved*, That, to ascertain the condition of the Union Pacific railroad and the Central Pacific railroad, the President of the United States is authorized to appoint a board of eminent citizens, not exceeding five in number, and who shall not be interested in either road, to examine and report upon the condition of, and what sum or sums, if any, will be required to complete each of said roads, for the entire length thereof, to the said terminus as a first-class railroad, in compliance with the several acts relating to said roads; and the expense of such board, including an allowance of ten dollars to each for their services for each day employed in such examination or report, to be paid equally by said companies.

The President to appoint a commission to examine and report upon the roads.

Expenses and pay of commissioners.

SEC. 3. *And be it further resolved*, That the President is hereby authorized and required to withhold from each of said companies an amount of subsidy bonds authorized to be issued by the United States under said acts sufficient to secure the full completion as a first-class road of all sections of such road upon which bonds have already been issued, or in lieu of such bonds he may receive as such security an equal amount of the first-mortgage bonds of such company; and if it shall appear to the President that the amount of subsidy bonds yet to be issued to either of said companies is insufficient to insure the full completion of such road, he may make requisition upon such company for a sufficient amount of bonds already issued to said company, or in his discretion of their first-mortgage bonds, to secure the full completion of the same. And in default of obtaining such security as [is] in this section provided, the President may authorize and direct the Attorney-General to institute such suits and proceedings on behalf and in the

Subsidy bonds to be withheld sufficient to secure the full completion as a first-class road, of all sections of such road, &c.

If the amount to be issued is insufficient, &c.

Attorney-General to institute necessary suits.

name of the United States in any court of the United States having jurisdiction, as shall be necessary or proper to compel the giving of such security, and thereby, or in any manner otherwise, to protect the interests of the United States in said road and to insure the full completion thereof as a first-class road, as required by law and the statutes in that case made.

Attorney-General to investigate whether the charter of the Union Pacific and Central Pacific railroads have not been forfeited, &c.

SEC. 4. *And be it further resolved*, That the Attorney-General of the United States be, and he is hereby, authorized and directed to investigate whether or not the charter and all the franchises of the Union Pacific Railroad Company and of the Central Pacific Railroad Company have not been forfeited, and to institute all necessary and proper legal proceedings; also to investigate whether or not said companies have or have not made any illegal dividends upon their stock, and if so, to institute the necessary proceedings to have the same reimbursed; and also to investigate whether any of the directors or any other agents or employees of said companies have or have not violated any penal law, and if so, to institute the proper criminal proceedings against all persons who have violated such laws.

To institute criminal proceedings if, &c.

Approved April 10, 1869.

ACT OF 1870.

[16 Statutes at Large, p. 121–2.]

May 6, 1870.

AN ACT to fix the point of junction of the Union Pacific Railroad Company and the Central Pacific Railroad Company.

Point of junction of the Union Pacific R. R. Co. and the Central Pacific R. R. Co. established northwest of the station at Ogden, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the common terminus and point of junction of the Union Pacific Railroad Company and the Central Pacific Railroad Company shall be definitely fixed and established on the line of railroad as now located and constructed, northwest of the station at Ogden, and within the limits of the sections of land hereinafter mentioned, viz., section thirty-six of township seven, of range two, situate north and west of the principal meridian and base line in the Territory of Utah, and sections twenty-five, twenty-six, and thirty-five of township seven, of range two, and section six of township six, and sections thirty and thirty-one of township seven, of range one, and sections one and two of township six, of range two, all situ-

Grant of certain sections.

ate north and west of said principal meridian and base line; and said companies are hereby authorized to enter upon, use, and possess said sections, which are hereby granted to them in equal shares, with the same rights, privileges, and obligations now by law provided with reference to other lands granted to said railroads: *Provided, however*, That the Secretary of the Interior shall designate a section of land in said township seven, of range two, belonging to said companies, and reserve the same for the benefit of schools in said territory, in accordance with the act of February twenty-one, eighteen hundred and fifty-five, establishing the office of surveyor-general of Utah, and to grant land for school and university purposes: *Provided, also*, That said companies shall pay for any additional lands acquired by this act, at the rate of two dollars and fifty cents an acre: *And provided further*, That no rights of private persons shall be affected by this act.

Reserve for schools.

Price of land.

Private rights.

Approved May 6, 1870.

ACT OF 1871.

[16 Statutes at Large, p. 515.]

March 3, 1871.

AN ACT making appropriations for the support of the army for the year ending June thirty, eighteen hundred and seventy-two, and for other purposes.

Secretary of the Treasury to pay over to Pacific Railroad Companies one-half of compensation, &c.

SEC. 9. That in accordance with the fifth section of the act approved July two, eighteen hundred and sixty-four, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and six-two," the Secretary of the Treasury is hereby directed to pay over in money to the Pacific Railroad Companies mentioned in said act, and performing services for the United States, one-half of the compensation at the rate provided by law for such services heretofore or hereafter rendered: *Provided*, That this section shall not be construed to affect the legal rights of the government in the obligations of the companies, except as herein specifically provided.

1862, chap. 120, vol. xii., p. 489.

1864, chap. 216, vol. xiii., p. 356.

Legal rights of parties not otherwise affected.

Approved March 3, 1871.

ACT OF 1873.

[17 Statutes at Large, p. 508.]

AN ACT making appropriations for the legislative, executive, and judicial expenses of the government for the year ending June 30, 1874, and for other purposes. March 3, 1873.

SEC. 2. That the Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed, together with the five per cent. of net earnings due and unapplied, as provided by law; and any such company may bring suit in the Court of Claims to recover the price of such freight and transportation; and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined, and also the rights of the United States, upon the merits of all the points presented by it in answer thereto by them, and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business.

Secretary of the Treasury to withhold payments to certain railroad companies for freight, &c.

Companies may bring suit in Court of Claims.

Appeal to Supreme Court. Causes to have precedence.

* * * * * * *

SEC. 4. That the Attorney-General shall cause a suit in equity to be instituted in the name of the United States against the Union Pacific Railroad Company and against all persons who may, in their own names, or through any agents, have subscribed for or have received capital stock in said road, which stock has not been paid for in full in money, or who may have received, as dividends, or otherwise, portions of the capital stock of said road, or the proceeds or avails thereof, or other property of said road, unlawfully and contrary to equity, or who may have received as profits or proceeds of contracts for construction or equipment of said road, or other contracts therewith, moneys or other property, which ought in equity to belong to said railroad corporation, or who may, under pretence of having complied with the acts to which this is an addition, have wrongfully and unlawfully received from the United States bonds, moneys, or lands, which ought, in equity, to be accounted for and paid to said railroad company or to the United States, and to compel payment for said stock and the collection and

Attorney-General to bring suit against U. P. R. R.

payment of such moneys, and the restoration of such property or its value, either to said railroad corporation or to the United States, whichever shall in equity be held entitled thereto. Said suit may be brought in the circuit court in any circuit, and all said parties may be made defendants in one suit. Decrees may be entered and enforced against any one or more parties defendant without awaiting the final determination of the cause against other parties. The court where said cause is pending may make such orders and decrees and issue such process as it shall deem necessary to bring in new parties, or the representatives of parties deceased, or to carry into effect the purposes of this act. On filing the bill writs of subpœna may be issued by said court against any parties defendant, which writ shall run into any district, and shall be served, as other like process, by the marshal of such district. The books, records, correspondence, and all other documents of the Union Pacific Railroad Company, shall at all times be open to inspection by the Secretary of the Treasury, or such persons as he may designate for that purpose. The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation. No dividend shall hereafter be made by such company, but from the actual net-earnings thereof; and no new stock shall be issued, or mortgages or pledges made on the property or future earnings of the company without leave of Congress, except for the purpose of funding and securing debt now existing, or the renewals thereof. No director or officer of said road shall hereafter be interested, directly or indirectly, in any contract therewith, except for his lawful compensation as such officer. Any director or officer who shall pay or declare, or aid in paying or declaring, any dividend, or creating any mortgage or pledge prohibited by this act, shall be punished by imprisonment not exceeding two years, and by fine not exceeding five thousand dollars. The proper circuit court of the United States shall have jurisdiction to hear and determine all cases of mandamus to compel said Union Pacific Railroad Company to operate its road as required by law.

Suit may be brought in any circuit.

Books to be subject to inspection.

Bankrupt laws do not apply.

No new stock, &c.

No director or officer to be interested in any contract.

Penalty.

Mandamus.

Approved March 3, 1873.

ACT OF 1874.

June 20, 1874. 1864, ch. 216, vol. xiii., p. 362.

[18 Statutes at Large, p. 111–12.]

AN ACT making additions to the fifteenth section of the act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July 1, 1862."

1862, ch. 120, vol. xii., p. 489.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be, and is hereby, added to the fifteenth section of the act approved July second, eighteen hundred and sixty-four, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two," the following words, namely: "And any officer or agent of the companies authorized to construct the aforesaid roads, or of any company engaged in operating either of said roads, who shall refuse to operate and use the road and telegraph under his control, in which he is engaged in operating for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line, or shall refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time, or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said companies, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and may be imprisoned not less than six months. In case of failure or refusal of the Union Pacific Railroad Company, or either of said branches, to comply with the requirements of this act and the acts to which this act is amendatory, the party injured, or the company aggrieved may bring an action in the district or circuit court of the United States in the territory, district, or circuit in which any portion of the road of the defendant may be situated, for damages on account of such failure or refusal; and, upon recovery, the plaintiff shall be entitled to judgment for treble the amount of all excess of freight and fares

Amendment to section 15, act July 2, 1864, ch. 216, vol. xiii., p. 362.

Refusal to operate and use Pacific Railroads as continuous lines, &c. Penalty.

In case of a failure, &c., of Union Pacific Railroad Company, or branches, to comply, &c., parties aggrieved may bring suit for damages.

Treble damages, &c., may be recovered.

collected by the defendant, and for treble the amount of damages sustained by the plaintiff by such failure or refusal; and for each and every violation of or failure to comply with the requirements of this act, a new cause of action shall arise; and in case of suit in any such territory, district, or circuit, process may be served upon any agent of the defendant found in the territory, district, or circuit in which said suit may be brought, and such service shall be by the court held to be good and sufficient; and it is hereby provided that for all the purposes of said act, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific railroad, to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March third, eighteen hundred and sixty-nine.

Service of process.

Denver Pacific railway to be deemed extension of Kansas Pacific, 1869, ch. 127, vol. xv., p. 324.

Approved June 20, 1874.

ACT OF 1874.

[18 U. S. Statutes at Large, p. 200.]

June 22, 1874.

AN ACT providing for the collection of moneys due the United States from the Pacific railroad companies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and hereby is, directed to require payment of the railroad companies, their successors and assigns, or the successors or assigns of any or either of said companies, all sums of money due or to become due the United States for the five per centum of the net earnings provided for by the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, or by any other act or acts in relation to the companies therein named, or any other such company or companies; and in case either of said railroad companies shall neglect or refuse to pay the same within sixty days after demand therefor made upon the treasurer of such railroad company, the Secretary of the Treasury shall certify that

Secretary of Treasury to require payment of five per centum net earnings from Pacific railroad companies.

1862, ch. 120, vol. xii., pp. 489–498.

1864, ch. 216, vol. xiii., pp. 356–365.

1873, ch. 226, §§ 2, 4, vol xvii., pp. 508–509.

Failure to pay within sixty days after demanded to be certified to Attorney-General.

fact to the Attorney-General, who shall thereupon institute the necessary suits and proceedings to collect and otherwise obtain redress in respect of the same in the proper circuit courts of the United States, and prosecute the same, with all convenient despatch, to a final determination.

Attorney-General to institute suits and proceedings.

To prosecute with despatch.

Approved June 22, 1874.